1813

IN THE SUPERIOR COURT OF THE STATE OF CALIFORNIA
IN AND FOR THE CITY AND COUNTY OF SAN FRANCISCO
BEFORE THE HONORABLE JOHN E. MUNTER, JUDGE
DEPARTMENT NO. 505

LESLIE J. WHITELEY AND)
LEONARD WHITELEY,)
PLAINTIFFS,)
VS.) NO. 303184
RAYBESTOS-MANHATTAN, INC., ET)
AL.,)
DEFENDANTS.)
_____)

REPORTER'S TRANSCRIPT OF PROCEEDINGS
TUESDAY, FEBRUARY 1, 2000
(VOLUME 15, PAGES 1813-2002)

REPORTED BY: JUDITH ANN OSSA, CSR 2310
OFFICIAL REPORTER

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APPEARANCES:

FOR THE PLAINTIFFS:
WARTNICK, CHABER, HAROWITZ & TIGERMAN
BY: MADELYN J. CHABER, ESQ.
ROBERT BROWN, ESQ.
MARTHA A.H. BERMAN, ESQ.
101 CALIFORNIA STREET, SUITE 2200
SAN FRANCISCO, CALIFORNIA 94111-5802

FOR THE DEFENDANT PHILIP MORRIS INCORPORATED:

SHOOK, HARDY & BACON LLP
BY: DAVID K. HARDY, ESQ.
GERALD V. BARRON, ESQ.
LUCY E. MASON, ESQ.
ONE MARKET, STEUART TOWER, NINTH FLOOR
SAN FRANCISCO, CALIFORNIA 94105-1310.

FOR THE DEFENDANT R.J. REYNOLDS TOBACCO COMPANY:
WOMBLE, CARLYLE, SANDRIDGE & RICE
BY: JEFFREY L. FURR, ESQ.
200 WEST SECOND STREET
WINSTON-SALEM, NORTH CAROLINA 27101

HOWARD, RICE, NEMEROVSKI, CANADY,
FALK & RABKIN
BY: H. JOSEPH ESCHER III
THREE EMBARCADERO CENTER, 7TH FLOOR
SAN FRANCISCO, CALIFORNIA 94111-4065

FOR DEFENDANT METALCLAD INSULATION CORPORATION:

http://legacy.library.ucsf.edu/tid/opi07a00/pdf
Guttag http://industrydocuments.ucsf.edu/docs/zjjl0001

MISCIAGNA & COLOMBATTO
BY: GREGORY S. ROSSE, ESQ.
27 MAIDEN LANE, 4TH FLOOR
SAN FRANCISCO, CALIFORNIA 94108

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EXAMINATION OF PLAINTIFFS' WITNESSES

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PLAINTIFFS' EXHIBITS

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DEFENSE EXHIBIT 4800
MARKED FOR IDENTIFICATION..... 1936
DEFENSE EXHIBIT 5922.02A
RECEIVED IN EVIDENCE..... 1944
(NOT OFFERED AND NOT RECEIVED)
DEFENSE EXHIBIT 5922.20A)
RECEIVED IN EVIDENCE..... 1946
DEFENSE EXHIBIT 5922.02E)
RECEIVED IN EVIDENCE..... 1947

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TUESDAY, FEBRUARY 1, 2000 9:35 A.M

(THE FOLLOWING PROCEEDINGS WERE HELD IN THE COURTROOM, IN THE PRESENCE OF THE JURY)

THE COURT: GOOD MORNING, EVERYBODY. WE ARE ON THE RECORD.

I WANT TO SAY, I RECEIVED A VERY NICE NOTE FROM MS. MCNACK. I WANT TO THANK YOU VERY MUCH FOR YOUR NOTE. AND THE NOTE ASKED ME TO APOLOGIZE TO EVERYBODY FOR HER NOT BEING HERE YESTERDAY. BUT I WANT TO TELL YOU THAT I TOLD THE JURORS YESTERDAY, THESE WERE CIRCUMSTANCES TOTALLY BEYOND YOUR CONTROL AND THAT IT WAS TOTALLY UNDERSTANDABLE.

AND ALSO, I TOLD EVERYBODY YESTERDAY THAT NO ONE IS GOING TO BE INCONVENIENCED BY THIS. IT ISN'T GOING TO EXTEND THE LENGTH OF TRIAL, BECAUSE THE LAWYERS HAVE GOTTEN TOGETHER AND HAVE AGREED TO SHORTEN THINGS TO MAKE UP FOR THAT DAY'S TIME.

SO EVERYBODY IS HAPPY AND NO ONE IS INCONVENIENCED. AND YOU OUGHT NOT TO FEEL ANY NEED TO FURTHER APOLOGIZE.

I WANT TO THANK YOU FOR THE NOTE, THOUGH. IT WAS A VERY NICE NOTE. WE ALL APPRECIATE IT. WE ALL UNDERSTAND THE SITUATION.

JUROR NO. 14: THANK YOU.

THE COURT: FOR THE RECORD, WE HAVE MR. WHITTEKER BACK ON THE WITNESS STAND.

AND MR. BROWN IS ABOUT TO CONTINUE HIS DIRECT EXAMINATION.

MR. BROWN: THANK YOU, YOUR HONOR

1818

FURTHER TESTIMONY OF
TROY WHITTEKER,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN PREVIOUSLY DULY SWORN, TESTIFIED FURTHER AS FOLLOWS:

DIRECT EXAMINATION (RESUMED)

MR. BROWN: Q. MR. WHITTEKER, GOOD MORNING.

A. GOOD MORNING.

Q. DID YOU MAKE YOUR AIRPLANE; YOU DID?

A. WHICH ONE?

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Q. ALL RIGHT. WE ARE GOING TO COVER THIS MORNING THE WORK YOU DID FROM THE TIME YOU BECAME A BUSINESS AGENT --
AND THAT'S 1960; CORRECT?
A. CORRECT. YES.
Q. OKAY. -- UNTIL YOU WENT TO WORK AT THE ORMOND BEACH POWER PLANT, WHICH WAS SOMETIME IN 1969. SO IT'S THAT EIGHT OR NINE YEARS THAT WE ARE TALKING ABOUT. OKAY. HAVE I GOT YOU FIXED ON THAT TIME? ALL RIGHT.
NOW, A LOT OF THESE QUESTIONS ARE GENERAL. WE ARE JUST GOING TO TRY TO GET AN OVERVIEW OF WHAT YOU WERE DOING DURING THAT TIME.
WHAT WERE THE TYPES OF PROJECTS OR JOBS YOU WORKED ON DURING THAT TIME FRAME?
A. I WORKED ON THREE DIFFERENT KINDS. IT WAS HOUSING, INDUSTRIAL AND COMMERCIAL.
Q. ALL RIGHT. AND WHAT DO YOU MEAN BY "COMMERCIAL AND INDUSTRIAL"?
A. ONE IS -- WOULD BE -- ONE OF THEM WOULD BE TO

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MANUFACTURE THE PRODUCT. THE OTHER ONE WOULD BE TO SELL IT WOULD BE THE DIFFERENCE IN THEM.
Q. OKAY. AND I GUESS I'M REALLY CONCENTRATING NOW ON THE POST-BUSINESS AGENT TIME, BECAUSE YOU WEREN'T DOING JOBS DURING THAT TIME, BUT I WILL COME BACK TO THAT PERIOD FOR SOME OTHER REASONS.
YOU STOPPED BEING A BUSINESS AGENT SOMETIME IN WHAT YEAR?
A. 1964.
Q. AND WHAT MONTH DID THAT HAPPEN?
A. JANUARY.
Q. SO IN 1-64, YOU WENT BACK OUT AND BEGAN TO WORK AS EITHER A JOURNEYMAN OR A FOREMAN?
A. I WAS A FOREMAN.
Q. WHAT WAS YOUR -- WHO WAS YOUR FIRST EMPLOYER AFTER THE BUSINESS AGENT EXPERIENCE?
A. R.E. MACK PLUMBING COMPANY.
Q. HOW LONG WERE YOU EMPLOYED BY R.E. MACK?
A. I WAS BELIEVE IT WAS FOUR YEARS.
Q. SO WHEN DID YOUR EMPLOYMENT THERE STOP?
A. '67.
Q. AND WHAT DID YOU DO FOR R.E. MACK?
A. I WAS KNOWN AS THE FINISH FOREMAN. IN OTHER WORDS, I HAD A CREW THAT SET THE TOILETS AND TRIMMED THE BASINS, THE SHOWERS --
Q. THAT'S CALLED -- I WALKED OVER YOUR LINE.
WHAT DID YOU SAY?
A. THE SHOWERS AND THE TUBS, AND ANYTHING IN THE

1820

HOUSE THAT HAD TO DO WITH PLUMBING.
Q. AND YOU CALL THAT THE FINISH WORK?
A. FINISH WORK.
Q. ALL RIGHT. NOW, TELL THE COURT AND JURY WHO WAS -- AND BY "WHO," I MEAN THE KIND OF OTHER TRADES THAT WERE WORKING -- I BETTER STEP BACK ONE.
DID YOU PRIMARILY, IF NOT EXCLUSIVELY, WORK ON NEW HOME CONSTRUCTION FOR R.E. MACK?
A. YES, I DID.
Q. SO FROM 1964 THROUGH 1967, YOU WERE IN NEW HOME CONSTRUCTION?
A. YES, SIR.
Q. WERE THESE TRACTS OR INDIVIDUAL HOMES OR WHAT?
A. TRACTS.

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Q. SO WHEN YOU WORKED IN THESE TRACTS, DID YOU GO HOUSE TO HOUSE?
A. FROM HOUSE TO HOUSE, YES.
Q. ALL RIGHT. NOW, WOULD YOU EXPLAIN TO THE COURT AND JURY WHO WERE THE -- OR WHAT OTHER CONSTRUCTION TRADES WERE IN THE VICINITY OF YOUR WORK DURING THE TIME YOU WERE DOING THIS TRACT HOUSING, NEW CONSTRUCTION.
A. FOREMOST WOULD BE FLOOR TILE PEOPLE.
Q. ALL RIGHT.
A. ELECTRICIANS, FINISH CARPENTERS, PUTTING THE TRIM IN THE BUILDINGS.
Q. ALL RIGHT.
A. AND THE DRYWALL PEOPLE FINISHING UP.
Q. WAS THERE ANY PARTICULAR TRADE THAT DID THE

1821

CLEANUP AFTER THE DRYWALL?
A. THEY WERE SUPPOSED TO PICK UP THE BIGGEST PART OF IT. AND THEN, AFTER THEM, THE LABORERS SANDED -- IT WAS USUALLY CONCRETE FLOORS, AND THE LABORERS WOULD SAND THE FLOOR TO GET THE PARTICLES OF MUD THAT THE DRYWALL PEOPLE DROPPED.
Q. WE'VE ALREADY GONE THROUGH THAT YOU SAW THEM DOING SANDING ON THE DRYWALL?
A. YES.
Q. THAT WOULD BE TRUE WHETHER WE ARE TALKING ABOUT 1965 OR 1955? I MEAN SANDING WAS ALWAYS DONE ON THIS DRYWALL?
A. SANDING WAS ALWAYS DONE BEFORE THE FLOOR MEN.
Q. HOW MUCH DUST, IF ANY, WAS CREATED BY THAT SANDING?
A. VERY MUCH.
Q. LET'S SEE. YOU MENTIONED ELECTRICIANS.
HOW ABOUT ACOUSTICAL SPRAY ON CEILINGS; WAS THAT DONE IN YOUR AREA?
A. SOME.
Q. OKAY.
A. IT WAS MINIMAL.
Q. DID YOU OBSERVE, IN YOUR WORK AREAS, ADHESIVES BEING PLACED ON THE FLOOR FOR WHATEVER TYPES OF FLOOR WAS BEING APPLIED?
A. YES.
Q. DID ROOFING GO ON WHILE YOU WERE DOING THE FINISH WORK?

1822

A. NOT VERY OFTEN. THE ROOFER WAS USUALLY FINISHED.
Q. SO THAT WAS RARE, INFREQUENT?
A. SIR?
Q. THAT WAS INFREQUENT?
A. YES.
Q. ALL RIGHT. NOW, LET'S MOVE TO COMMERCIAL AND INDUSTRIAL.
WAS ROCKETDYNE ONE OF THE INDUSTRIAL PLACES YOU WORKED?
A. YES, IT WAS.
Q. EXPLAIN WHAT THE PROJECT WAS AND WHAT YOU DID AT IT.
A. ROCKETDYNE IS A TESTING CENTER FOR THE ROCKETS THAT WENT TO THE MOON, WHATEVER THEY WERE DOING; SATELLITES.
Q. WHERE IS IT LOCATED?
A. IN THE HILLS ABOVE THE TOWN OF SANTA SUSANNA IN THE SOUTHEASTERN CORNER OF VENTURA COUNTY.
Q. WERE THEY ACTUALLY LAUNCHING ROCKETS FROM THERE?
A. NO.

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Q. WHAT DID THEY DO?
A. THEY USED THE SAME ROCKET THAT WENT -- THAT SENT THE PROJECT TO THE MOON, BUT IT WAS BOLTED DOWN AND STAYED IN PLACE WHILE THEY TESTED IT.
Q. DID THEY FIRE OFF THE ROCKETS BUT HOLD THEM IN PLACE?
A. YES, THEY DID.
Q. IS THAT HAPPENED?
A. EXCUSE ME.

1823

Q. WHAT DID YOU AND YOUR CREW DO WITH RESPECT TO THESE ROCKET-HOLDING STRUCTURES?
A. VERY LITTLE WITH THE HOLDING.
WHAT WE DID WAS, THE FUEL LINES THAT CAME TO THE ROCKET, THE WATER LINES THAT COOLED IT, THAT SHOOT THE FLAME THAT WENT OUT, AND AIR LINES THAT CONTROLLED THE VALVES THAT CONTROLLED THE FUEL.
Q. WERE THERE INSULATORS WORKING IN THE AREA WHERE YOUR CREWS WERE?
A. ALWAYS.
Q. WERE YOU IN THE AREAS WHERE YOUR CREWS WERE?
A. YES, I WAS.
Q. WHAT WERE YOU DOING AS A FOREMAN IN TERMS OF YOUR CREW?
A. CORRECTION, SIR. I WAS NOT A FOREMAN AT ROCKETDYNE.
Q. I'M SORRY. WERE YOU A JOURNEYMAN?
A. JOURNEYMAN.
Q. WERE YOU DOING THE WORK?
A. YES.
Q. WERE YOU WORKING WITH VALVES?
A. YES, I WAS.
Q. GASKETS, ALL KINDS OF GASKETS, PACKING?
A. NOT TOO MUCH.
Q. OKAY.
A. THOSE WERE HIGH-PRESSURED FITTINGS. AND THE GASKETS WERE PUT IN MECHANICALLY AT THE FACTORY.
Q. WHAT DID YOU SEE THE INSULATORS DOING?

1824

A. THEY WERE COVERING THE PIPE. IT WAS EXCEPTIONALLY COLD, IN THE NEIGHBORHOOD OF MINUS 2000 DEGREES FOR LIQUID OXYGEN, LIQUID NITROGEN.
Q. LET'S GO BACK TO THE TIME YOU WERE A BUSINESS AGENT.
YOU WORE A SUIT AND TIE?
A. YES, SIR.
Q. YOU HAD A UNION CAR?
A. YES, SIR.
Q. SO YOUR FAMILY DIDN'T RIDE IN THAT CAR --
A. NO, SIR.
Q. -- DURING THAT THREE-YEAR PERIOD?
A. NO, SIR, THEY DIDN'T.
Q. ALL RIGHT. GIVE US JUST A DESCRIPTION OF WHAT WOULD COMMONLY HAPPEN DURING THAT THREE-YEAR PERIOD WHEN YOU ARRIVED AT HOME AFTER A DAY'S WORK.
A. WELL, JUST TO BE REALLY DESCRIBING IT, IT WAS A MOB. MY CHILDREN MET ME AT THE CAR, AND IT WAS A LITTLE WRESTLING MATCH, BECAUSE EACH ONE WANTED TO BE FIRST TO GREET DADDY.
Q. NOW, IN 1960, LESLIE WHITELEY HAD JUST BEEN BORN IN SEPTEMBER. SO I THINK WE CAN ASSUME SHE WASN'T RUNNING OUT TO THE CAR AT THAT POINT?
A. NO.

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Q. DURING THE TIME WHEN SHE WAS AN INFANT AND WASN'T BIG ENOUGH TO GO OUT TO THE CAR, WHAT CONTACT, IF ANY, DID YOU HAVE WITH HER RIGHT AFTER YOU GOT HOME AND WHILE YOU STILL HAD ON YOUR BUSINESS SUIT?

1825

A. I'D USUALLY GO IN, PICK HER UP AND TAKE HER TO THE ROCKING CHAIR, AND ROCK HER A LITTLE BIT.

Q. DO YOU REMEMBER WHERE YOU WOULD TAKE YOUR COAT OFF OR NOT, YOUR SUIT COAT?

A. ACCORDING TO WHETHER IT WAS WINTER OR SUMMER. IF IT WAS SUMMERTIME, I USUALLY DIDN'T WEAR THE COAT WHILE DRIVING.

Q. HOW LONG WOULD THIS CONTACT WITH HER LAST WHILE SHE WAS AN INFANT AND WHILE YOU WERE -- YOU WOULD PUT HER ON YOUR LAP?

A. AT LEAST 15, 20 MINUTES AT A TIME.

Q. NOW, DID THERE COME A TIME WHEN LESLIE COULD JOIN THE MOB OUT AT THE CAR?

A. YES.

Q. ABOUT WHEN WAS THAT? HOW OLD WAS SHE?

DON'T WORRY ABOUT THE YEAR. JUST HOW OLD WAS SHE?

A. ENOUGH TO WALK AND RUN. SHE'S ONE OF THE KIDS.

Q. AND DID SHE THEN PARTICIPATE IN THE MOB SCENE?

A. YES.

Q. FROM THERE UNTIL YOU WERE NO LONGER THE BUSINESS AGENT?

A. YES, SHE DID.

Q. OKAY. NOW, IN 1964 -- LET'S DO A LITTLE MATH.

SHE WAS FOUR YEARS OLD AT THE END OF 1964?

A. I THINK SO. I THINK YOU'RE RIGHT.

Q. OKAY. MY MATH IS NOTORIOUSLY WEAK. ROUGHLY, FOUR YEARS OLD.

1826

ALL RIGHT. NOW, YOU GO TO WORK FOR THIS R.E. MACK WHEN YOU'RE DOING THIS HOUSING CONSTRUCTION YOU TALKED ABOUT.

NOW, DESCRIBE WHAT HAPPEN ON YOUR ARRIVAL HOME AFTER WORK, AND TELL US HOW YOU WERE DRESSED. AND IF YOU WERE DRESSED DIFFERENTLY SOMETIMES, TELL US THAT.

A. I ALWAYS CARRIED A LUNCH BUCKET. THE MINUTE I GOT HOME, IT WAS A RUSH TO GET TO THE BUCKET, BECAUSE THEY KNEW I LEFT COOKIES OR A CUT-UP CANDY BAR, SOMETHING IN THAT BUCKET. IT WAS A RUSH TO SEE WHO WAS GOING TO BE THE FIRST ONE.

Q. AND BY THIS TIME, LESLIE WAS PARTICIPATING?

A. SHE WAS.

Q. OKAY. NOW, DID THAT -- WAS THAT MORE OR LESS A COMMON EXPERIENCE THAT WENT ON FROM 1964 THROUGH THE TIME YOU WENT TO WORK FOR ORMOND BEACH?

A. YES, IT WAS.

Q. BY THE TIME YOU WENT TO WORK FOR ORMOND BEACH, HOW OLD WOULD LESLIE HAVE BEEN?

A. (EXAMINING)

Q. YOU ARE LOOKING AT AN EXHIBIT?

A. I'M LOOKING AT MY ITEMIZED STATEMENT OF EARNINGS FROM --

Q. SOCIAL SECURITY?

A. SOCIAL SECURITY.

Q. OKAY. SO YOU ARE STARTING AT ORMOND BEACH WHEN?

A. '69.

Q. ALL RIGHT. SO 1969, SHE WAS ABOUT 10; RIGHT?

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A. ABOUT 10.
Q. AT THE END OF THE YEAR, IN SEPTEMBER, WOULD HAVE BEEN HER TENTH BIRTHDAY.
HOW LONG DID THE MOB SCENE AT THE CAR GO ON IN TERMS OF LESLIE? WAS SHE STILL DOING IT AT THE AGE OF 10?
A. AS FAR AS I CAN REMEMBER, YES.
Q. CAN YOU RECALL HOW MUCH LONGER IT LASTED?
A. NO. THEY WERE SOPHISTICATED THEN.
Q. GETTING TOO OLD FOR THAT?
A. GETTING TOO OLD.
Q. ONE LOUSY PART OF A CANDY BAR IN A LUNCH BUCKET JUST WASN'T ENOUGH.
DURING THAT PERIOD OF TIME THAT WE JUST COVERED, UP FROM BUSINESS AGENT THROUGH YOUR WORK AT ORMOND BEACH, WHAT WAS YOUR ORDINARY DRESS? WHAT DID YOU COMMONLY WEAR?
A. AS A JOURNEYMAN?
Q. WHAT?
A. AS A JOURNEYMAN?
Q. AS A JOURNEYMAN.
A. TO AND FROM WORK, I WORE JEANS, A SHIRT, A JACKET.
AND AS A JOURNEYMAN AT WORK, I WORE OVERALLS.
Q. AND AGAIN, THOSE ARE THE ONES THAT -- KIND OF A BIG BIB, SUSPENDERS?
A. YES, SIR.
Q. OPEN ON THE SIDE?
A. YES, SIR.
Q. OKAY. AND THAT WAS -- WAS THAT WHAT YOU WORE FOR

1828

R.E. MACK OR NOT?
A. NO. R.E. MACK WAS IN CLEAN HOUSES, CLEAN ROOMS. AND IT WAS USUALLY JUST JEANS AND A SHIRT.
Q. OKAY. WHEN WERE YOU A FOREMAN DURING THIS PERIOD?
A. ALL THE TIME.
Q. SO THIS IS ALL --
A. ALL THE TIME I WAS WITH R.E. MACK.
Q. FROM '64 TO 1969, ORMOND BEACH THOUGH, WERE YOU ALWAYS A FOREMAN?
A. NO.
Q. SOMETIMES --
A. I HAD SEVERAL SMALL JOBS. EXCUSE ME.
Q. WE ARE GETTING SIGNALS OF DISMAY FROM THE COURT REPORTER. I MIGHT BE DOING IT TOO. I WILL TRY HARD NOT TO DO THAT.
I DIDN'T HEAR YOUR ANSWER.
A. I USUALLY WATCH YOU AND NOT HER, SO THAT I DON'T SEE HER TRYING TO CATCH UP.
Q. FROM '64 TO '69, YOU WERE FOREMAN ON SOME OCCASIONS?
A. YES, I WAS.
Q. WHEN?
HOW ABOUT AT ROCKETDYNE?
A. YES. I AM TRYING TO FIND OUT WHAT THE NAME OF THE COMPANY WAS.
I BELIEVE IT WAS STATE -- (EXAMINING). I BELIEVE IT WAS STATE MECHANICAL CONSTRUCTORS.

1829

Q. WERE YOU A FOREMAN FOR THEM?
A. YES.
Q. DOING WHAT KIND OF WORK?
A. AT ROCKETDYNE. AND IT WAS AIR LINES, WATER LINES, SPRINKLER SYSTEM.

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Q. HOW LONG DID YOU WORK AT -- OVER WHAT PERIOD OF TIME DID YOU WORK AT ROCKETDYNE?
AND I DON'T MEAN NECESSARILY CONTINUOUSLY, BUT OVER WHAT PERIOD OF TIME WERE YOU THERE, OFF AND ON?
A. PROBABLY BE ABOUT 10 YEARS.
Q. 10 YEARS?
A. OFF AND ON.
Q. OKAY.
A. NOT CONTINUOUSLY, BUT OFF AND ON.
Q. AND IN THAT PERIOD OF TIME FROM -- IT WOULD BE FROM '67 TO '69, WERE YOU THERE QUITE A BIT?
A. (EXAMINING)
ONLY WITH ONE COMPANY. IT WAS J. A. MITCHELL. IT WAS A SHORT JOB.
Q. SO YOU DIDN'T HAVE A LOT OF TIME AT ROCKETDYNE DURING THAT PERIOD?
A. NO.
Q. OKAY. LET ME -- WE ARE GOING TO CHANGE NOW TO A DIFFERENT TOPIC.
UP UNTIL 1969, I THINK YOU'VE TESTIFIED, YOUR SMOKING WAS WHILE IN THE NAVY AND WHILE YOU WERE A BUSINESS AGENT; IS THAT RIGHT?
A. YES, SIR.

1830

Q. NOW, AFTER YOU STOPPED SMOKING IN 1963, DID YOU EVER HAVE OCCASION TO SEE OR AT LEAST READ A LABEL ON A CIGARETTE PACKAGE UP THROUGH 1969?
A. NO, SIR.
Q. OKAY. DURING THE PERIOD OF TIME THAT LESLIE WHITELEY WAS GROWING UP IN YOUR HOME, DID YOU EVER ARRIVE AT AN UNDERSTANDING THAT CIGARETTES CREATED A HIGH RISK OF A FATAL DISEASE?
A. I DIDN'T KNOW ANYTHING ABOUT IT.
Q. DID YOU KNOW, DURING THIS PERIOD, THAT UP TO AS MUCH AS ONE HALF OF SMOKERS WHO DID A PACK OR MORE THAN A PACK A DAY SMOKING WOULD DIE OF SOME SMOKING DISEASE?
MR. FURR: ARGUMENTATIVE.
THE COURT: SUSTAINED.
MR. BROWN: I'M SORRY?
MR. FURR: HE ALREADY SAID IN THE LAST ANSWER, HE DIDN'T KNOW ANYTHING ABOUT IT.
THE COURT: THAT'S ARGUMENTATIVE, IN LIGHT OF HIS LAST ANSWER.
MR. BROWN: I SEE. I UNDERSTAND.
THANK YOU.
Q. DURING THE TIME THAT LESLIE WHITELEY WAS GROWING UP, LIVING IN YOUR HOME, DO YOU RECALL ANY CONVERSATION THAT YOU HAD OR YOU OBSERVED ANYONE HAVING WITH HER ABOUT THE HEALTH RISK OF SMOKING CIGARETTES?
A. NO, SIR.
Q. DID YOU HAVE ANY SMOKING RULES AS FAR AS YOUR CHILDREN WERE CONCERNED, INCLUDING LESLIE WHITELEY?

1831

A. WE DIDN'T HAVE ANY SMOKING RULES.
Q. DID YOU PREFER THAT THEY NOT SMOKE?
A. I DIDN'T UNDERSTAND.
Q. DID YOU PREFER THAT THEY -- DID YOU PREFER THAT THEY NOT SMOKE?
A. CERTAINLY.
Q. WHY?
A. THERE WAS NO REASON TO.
Q. DID YOU EVER TALK TO THEM, ANY OF YOUR CHILDREN, ABOUT THEIR SMOKING AFTER THEY WERE ADULTS?

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A. OFF AND ON, YES, SIR.
Q. ABOUT WHAT? DID YOU EVER TALK ABOUT HEALTH RISKS?
A. SOMETIMES.
Q. WHEN?
A. YOU SAID AFTER THEY WERE ADULTS?
Q. YES. RIGHT.
A. I CAN'T ANSWER THAT, BECAUSE I DON'T KNOW.
Q. OKAY. NOW, LET'S SEE.
WHEN DID LESLIE GRADUATE FROM HIGH SCHOOL? DO YOU RECALL THAT YEAR?
MAYBE, JUST HOW OLD SHE WAS WHEN SHE GRADUATES. WHEN DID THAT HAPPEN?
A. I THINK SHE HAD ALREADY TURNED 17. SHE GRADUATED A YEAR EARLY.
Q. DID YOU KNOW THAT SHE WAS SMOKING WHILE SHE WAS STILL LIVING IN YOUR HOME?
A. NO.

1832

Q. IF YOU HAD FOUND OUT, WHAT WOULD YOU HAVE DONE?
A. "GET OUT."
Q. YOU WOULD HAVE SAID WHAT?
A. TOLD HER TO GET OUT.
Q. OKAY. WHY?
A. WE DIDN'T ALLOW SMOKING IN THE HOUSE.
Q. SO AT LEAST THERE WAS THAT RULE; YOU COULDN'T SMOKE IN THE HOUSE?
A. RIGHT.
Q. OKAY. YOU SAID; "GET OUT OF THE HOUSE; DON'T SMOKE THERE"? IS THAT WHAT YOU MEANT?
A. WE DIDN'T KNOW SHE WAS SMOKING.
Q. ALL RIGHT. WHEN SHE GRADUATED FROM HIGH SCHOOL, THEN LESLIE DID WHAT?
A. SHE WENT TO VIRGINIA.
Q. DID YOU EVER REACH AN UNDERSTANDING THAT CIGARETTES WERE -- HAD A HIGH RISK OF DANGEROUS FATAL DISEASE?
A. YES, BUT IT WAS LATER YEARS BEFORE I FOUND THAT OUT.
Q. OKAY. WHEN DO YOU FIRST RECALL HEARING AS OPPOSED TO UNDERSTANDING THAT THERE WERE SERIOUS HEALTH RISKS TO SMOKING?
A. I DON'T KNOW THE EXACT YEAR, BUT I WALKED IN THE HOUSE ONE DAY. THE TELEVISION WAS ON, AND THERE WAS A GROUP OF PEOPLE IN THE CONGRESSIONAL HEARING THAT WAS DISCUSSING THE MERITS OF SMOKING.
MS. MASON: OBJECTION, YOUR HONOR. SOMETHING WE

1833

DISCUSSED EARLIER.
MR. BROWN: I'M JUST SETTING A TIME, YOUR HONOR. WE ARE NOT GOING TO GO INTO IT.
THE COURT: YOU ARE DOING MORE THAN SETTING A TIME RIGHT NOW.
I WILL SUSTAIN THE OBJECTION. IF ALL YOU ARE DOING IS SETTING A TIME, YOU CAN DO IT IN A MORE DIRECT WAY.
MR. BROWN: Q. WAS THAT ABOUT MID-90'S SOMETIME, 1994 OR SO?
A. I THINK SO.
Q. OKAY. THAT'S GOOD.
IN THE 1950S, '60S OR '70S, DID YOU EVER HEAR OF THE SURGEON GENERAL -- OF A SURGEON GENERAL?
A. NO, SIR.
Q. DID YOU KNOW WHAT IT WAS?

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A. NO, SIR.
Q. WHEN WAS THE FIRST TIME YOU HAVE A RECOLLECTION OF HEARING THAT THERE WAS SOMEBODY CALLED A SURGEON GENERAL?
A. I DON'T KNOW THE EXACT YEAR. BUT THE ONLY REASON I REMEMBER IT WAS BECAUSE THIS WAS THE FIRST LADY SURGEON GENERAL.
AND THAT'S THE FIRST TIME I KNEW WHAT A SURGEON GENERAL WAS.
Q. WHAT DID YOU THINK IT WAS WHEN YOU HEARD THAT?
A. I HEARD THAT IT WAS -- I DIDN'T REALLY UNDERSTAND WHAT A SURGEON GENERAL WAS.
Q. LET ME ASK YOU SOME QUESTIONS, FIRST OF ALL, ABOUT VENTURA.

1834

WHEN LESLIE WAS GROWING UP, YOU LIVED IN VENTURA; CORRECT?
A. SIR?
Q. YOU LIVED IN VENTURA WHILE LESLIE WAS GROWING UP?
A. YES.
Q. WHEN DID YOU MOVE TO OJAI?
A. SPRING, I BELIEVE IT WAS, '64.
Q. WHERE WAS YOUR HOUSE IN VENTURA, JUST ROUGHLY? I DON'T NEED THE ADDRESS.
WHERE WAS IT LOCATED?
A. SOUTHEASTERN PART OF VENTURA.
Q. WHO WERE THE KIDS THAT SHE GREW UP WITH?
I'M TALKING NOT THEIR NAMES NECESSARILY, BUT I MEAN, WERE THEY KIDS SHE KNEW AT SCHOOL, KIDS SHE KNEW IN THE NEIGHBORHOOD?
A. SCHOOL KIDS, CHURCH-RELATED.
Q. DID SHE HANG OUT WITH KIDS IN THE NEIGHBORHOOD?
A. YES, SHE DID.
Q. WHAT KIND OF KIDS WERE THEY?
A. ALL VERY GOOD KIDS, THEY WERE. I CAN'T RECALL ANYTHING THAT HAPPENED IN THE NEIGHBORHOOD THAT I WOULD SAY WOULD BE BAD KIDS.
Q. WHAT ABOUT LESLIE, YOUR DAUGHTER; WHAT KIND OF A CHILD WAS SHE GROWING UP?
A. JUST ONE OF THE KIDS.
Q. OKAY. DID SHE SEEM REBELLIOUS TO YOU?
A. NO.
Q. DID SHE SHOW ANY TENDENCY TO RESIST AND FIGHT

1835

DISCIPLINE?
A. NO.
Q. WERE THERE ANY SIGNIFICANT DIFFERENCES IN THE WAY THAT LESLIE CONDUCTED HERSELF THAN HER BROTHERS AND SISTERS CONDUCTED THEMSELVES?
A. NO.
Q. WHERE DO YOUR CHILDREN LIVE TODAY?
A. ALL OF THEM LIVE WITHIN -- NOT ALL OF THEM, BUT ALL BUT ONE LIVE WITHIN HALF A MILE OF ME.
Q. AND YOU LIVE WHERE TODAY?
A. OJAI, CALIFORNIA.
Q. AND THAT'S WHERE LESLIE LIVES?
A. YES.
Q. DOES SHE LIVE CLOSE TO YOU?
A. YES. SHE LIVES ON MY RANCH.
Q. HOW FREQUENTLY DO YOU SEE HER?
A. MOST OF THE TIME, EVERY DAY.
Q. HOW FREQUENTLY DO YOU SEE HER CHILDREN?
A. SIR?
Q. HOW FREQUENTLY DO YOU SEE HER CHILDREN?

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A. EVERY DAY.
Q. AND HOW ABOUT THE OTHER CHILDREN, YOUR CHILDREN, HOW OFTEN DO YOU SEE THEM, THE ONES THAT LIVE AT LEAST IN THE AREA?
A. TWO, THREE TIMES A WEEK.
Q. WHO IS THE ONE THAT DOESN'T LIVE LOCALLY, THE ONE CHILD THAT DOESN'T LIVE IN THE VENTURA AREA? WHO IS THAT?
A. CHRISTINE.

1836

Q. WHERE DOES SHE LIVE?
A. SHE LIVES IN PORTLAND, OREGON.
Q. HOW OFTEN DO YOU SEE HER?
A. THREE TIMES A YEAR.
Q. HOW WOULD YOU DESCRIBE YOUR FAMILY, YOU AND YOUR WIFE AND YOUR CHILDREN AND GRANDCHILDREN, IN TERMS OF HOW CLOSE THEY ARE, HOW NOT CLOSE THEY ARE?
A. I THINK WE'RE A REGULAR FAMILY. NOTHING OUTSTANDING.
Q. HOW DID LESLIE DO AT SCHOOL? WAS SHE A GOOD STUDENT?
A. WHAT WAS THAT?
Q. HOW DID LESLIE DO AT SCHOOL?
A. VERY GOOD. IN FACT, SHE ENDED UP ON THE HONOR ROLL.
Q. WHEN SHE GRADUATED?
A. YES.
Q. DID SHE EVER HAVE ANY DISCIPLINARY PROBLEMS OF ANY SIGNIFICANCE AT THE SCHOOL?
A. NOT THAT I'M AWARE OF.
Q. GIVE US SOME SENSE OR JUST SOME BRIEF DESCRIPTION OF WHAT KIND OF A COMMUNITY WAS VENTURA IN THE 1960S AND UP TO THE TIME THAT SHE LEFT -- THAT LESLIE LEFT THE HOME, AND WENT BACK TO VIRGINIA.
MR. FURR: OBJECTION, VAGUE AND AMBIGUOUS.
THE COURT: SUSTAINED.
MR. BROWN: Q. WAS IT URBAN OR WAS IT AN AGRICULTURAL COMMUNITY?

1837

A. IT WAS URBAN AND AGRICULTURAL.
Q. IT WAS BOTH?
A. BOTH.
Q. OKAY. HOW BIG WAS THE POPULATION?
A. I DON'T KNOW.
Q. WAS IT A BIG POPULATION OR SMALL OR WHAT?
A. IT WAS GOOD-SIZED, BUT I DON'T KNOW HOW BIG.
Q. HOW MANY HIGH SCHOOLS WERE THERE?
A. TWO. AND ONE OF THEM WAS PRIVATE. EXCUSE ME. THREE. TWO OF THEM WERE PRIVATE.
Q. ONE PUBLIC HIGH SCHOOL?
A. RIGHT.
Q. AND WHERE DID -- LOCATIONWISE, WHERE DID LESLIE GO TO HER GRAMMAR SCHOOL?
A. DIRECTLY BEHIND OUR HOUSE. OUR HOUSE BACKED UP TO THE GRAMMAR SCHOOL.
Q. DID SHE THEN GO TO MIDDLE SCHOOL AFTER THAT?
A. NO.
Q. JUNIOR HIGH SCHOOL?
A. IS THAT WHAT YOU CALL A MIDDLE SCHOOL, JUNIOR HIGH SCHOOL? I DON'T KNOW THE NAMES. I DON'T KNOW WHERE SHE WENT TO JUNIOR HIGH SCHOOL.
Q. WHERE WAS THAT LOCATED?
A. VENTURA.
Q. HOW FAR FROM YOUR HOME?

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A. ABOUT ONE MINUTE.
Q. HOW DID SHE GET THERE?
A. PART OF THE TIME SHE WALKED, AND PART OF THE TIME
1838
SHE RODE THE BUS.
Q. SCHOOL BUS?
A. YES, SIR.
Q. CAN YOU RECALL APPROXIMATELY WHEN HER HUSBAND, LEONARD, AND LESLIE GOT MARRIED?
A. ABOUT 12 YEARS AGO.
Q. AND FROM YOUR OBSERVATION, HOW WOULD YOU DESCRIBE THEIR MARRIAGE?
A. VERY GOOD.
Q. NOW, WE'VE HEARD, BY SOME OTHER WITNESSES, THAT LESLIE WAS DIAGNOSED WITH LUNG CANCER IN -- I THINK IT'S JUNE 1998.
FROM YOUR OBSERVATION, HOW HAS LESLIE REACTED TO THAT DIAGNOSIS?
A. IT CHANGED HER DISPOSITION FROM VERY HAPPY TO DEPRESSED TO BACK TO HAPPY AGAIN.
Q. SO SHE HAS BOTH DEPRESSION AND UP MOMENTS?
A. YES.
Q. OKAY. HAVE YOU OBSERVED ANY OTHER SIGNIFICANT PERSONALITY OR JUST REACTIONS THAT SHE'S HAD?
A. OTHER THAN UP AND DOWN ON HER DEPRESSIONS, NO.
Q. THE TIME THAT SHE WAS DIAGNOSED, WERE YOU AROUND THE DAY OF THE DIAGNOSIS?
A. I DON'T REMEMBER.
Q. HOW IS LESLIE NOW, IN TERMS OF OPTIMISM OR PESSIMISM ABOUT HER FUTURE?
A. SHE FEELS VERY GOOD.
Q. HOW ABOUT HER HUSBAND LEONARD?
1839
A. HE'S ABOUT THE SAME WAY.
Q. HAS SHE TALKED TO YOU ABOUT THE WAY SHE FEELS ABOUT THE SITUATION?
A. NOT VERY MUCH. THAT'S MOTHER'S TALK.
Q. OKAY. HAVE YOU OBSERVED THAT SHE HAS ANY PHYSICAL SYMPTOMS CURRENTLY?
A. ONLY ON PICKING UP WEIGHT FROM HER MEDICINE.
Q. IS SHE STILL -- IS SHE ACTIVE -- LET ME PUT IT THIS WAY: WAS SHE ACTIVE IN HER CHILDREN'S ACTIVITY PRIOR TO THE DIAGNOSIS?
A. YES.
Q. AND DID SHE CONTINUE THAT AFTER SHE WAS DIAGNOSED?
A. YES, SHE DID.
Q. WHAT KIND OF ACTIVITIES WOULD SHE GO TO WITH THEM EVEN AFTER THE DIAGNOSIS?
A. CUB SCOUTS, SOCCER, BASEBALL.
Q. OKAY. GENERALLY, FROM YOUR DISCUSSIONS WITH LESLIE AND FROM WHAT YOU HAVE OBSERVED, COULD YOU JUST GIVE US AN OVERVIEW HOW SHE SEEMS TO BE REACTING TO THIS SITUATION SHE IS IN?
A. SHE'S TAKING IT VERY WELL.
MR. BROWN: OKAY. THAT'S ALL, YOUR HONOR.
THE COURT: WHO IS NEXT?
YES, MS. MASON.

CROSS-EXAMINATION
BY MS. MASON: Q. GOOD MORNING, MR.
1840
WHITTEKER.

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A. GOOD MORNING.
Q. WE HAVE NOT MET BEFORE. MY NAME IS LUCY MASON.
A. WE'VE MET BEFORE, HAVEN'T WE?
Q. I DON'T BELIEVE SO, SIR. I MIGHT HAVE MET YOU IN THE HALLWAY.
BUT AGAIN, I'M LUCY MASON. IT'S NICE TO SEE YOU AGAIN.
CAN YOU HEAR ME, SIR, FROM HERE?
A. NOT TOO WELL, BUT I READ LIPS TOO.
Q. OKAY. I'LL COME A LITTLE CLOSER. YOU LET ME KNOW IF YOU CAN'T HEAR ME.
OKAY? ALL RIGHT, SIR.
I WANT TO BEGIN THIS MORNING BY TALKING A BIT ABOUT YOUR WORK WITH ASBESTOS --
A. YES, MA'AM.
Q. -- WHICH YOU TESTIFIED ABOUT EARLIER.
YOU ARE IN PRETTY GOOD HEALTH, AREN'T YOU, SIR?
A. YES.
Q. AND MR. WHITTEKER, ON DIRECT, YOU TOLD US THAT YOU SMOKED CIGARETTES FOR SOME PERIOD OF TIME; IS THAT RIGHT?
A. A SHORT PERIOD.
Q. YOU SMOKED?
A. TWO SHORT PERIODS.
Q. ONCE IN THE NAVY; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND THEN AGAIN IN THE 1960S?

1841

A. YES, MA'AM.
Q. AND YOU SMOKED EVERY DAY WHEN YOU WERE SMOKING IN THE '60S?
A. I THINK SO, YES.
Q. BUT YOU HAVEN'T SMOKED SINCE ABOUT 1963; IS THAT RIGHT?
A. NO, SIR. I MEAN NO, MA'AM. EXCUSE ME.
Q. THAT'S ALL RIGHT. THAT'S ALL RIGHT.
SIR, YOU DON'T HAVE ANY MEDICAL CONDITION THAT'S IN ANY WAY RELATED TO ASBESTOS; IS THAT RIGHT?
A. NO, I DON'T.
Q. IN FACT, YOU HAVE BEEN EXAMINED BY A DOCTOR FOR THAT VERY PURPOSE, HAVEN'T YOU, SIR?
A. YES, MA'AM.
Q. AND YOU HAVE HAD A CHEST X-RAY IN THE LAST FIVE YEARS; IS THAT RIGHT?
A. YES, MA'AM.
Q. AND THE DOCTOR TOLD YOU THAT EVERYTHING LOOKED CLEAR AS FAR AS YOUR LUNGS --
A. YES.
THE COURT: YOU NEED TO LET HER FINISH HER QUESTION.
THE WITNESS: I'M SORRY.
MS. MASON: Q. I WILL TRY TO GO A LITTLE SLOWER, SIR.
LET ME DISCUSS WITH YOU, ONLY BRIEFLY, SIR, YOUR VARIOUS JOBS THAT YOU TALKED ABOUT THROUGH THE YEARS, WORKING AS A PLUMBER AND A PIPEFITTER.

1842

YOU TALKED FOR A LITTLE WHILE ABOUT THE MANDALAY STEAM PLANT.
DO YOU RECALL THAT SIR?
A. YES, MA'AM.
Q. YOU TOLD US THAT -- I THINK FROM LOOKING AT YOUR SOCIAL SECURITY RECORDS -- THAT THE LAST TIME YOU WORKED

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THERE WAS FROM APRIL THROUGH JUNE OF 1959; IS THAT RIGHT, SIR?

A. EXCUSE ME A MINUTE.

Q. SURE.

A. (EXAMINING) YES, MA'AM.

Q. ALL RIGHT.

A. BECAUSE THE NAMES ON THIS STATEMENT OF EARNINGS IS NOT THE COMPANY I WORKED FOR.

Q. I SEE. BUT IT'S YOUR BEST RECOLLECTION, ISN'T IT, SIR, THAT YOU LAST WORKED AT MANDALAY STEAM PLANT IN 1959?

A. (EXAMINING)
NO. 1959.

Q. EXCUSE ME. 1959. I APOLOGIZE IF I SAID SOMETHING DIFFERENT.
AND, SIR, JUST SO WE'RE CLEAR, MRS. WHITELEY, LESLIE WHITELEY, YOUR DAUGHTER, WASN'T BORN UNTIL SEPTEMBER OF 1959; CORRECT?

A. YES, MA'AM.

Q. SO SHE WAS NOT ALIVE WHILE YOU WORKING FOR THE MANDALAY STEAM PLANT; IS THAT CORRECT?

A. YES, MA'AM.

1843

Q. ALL RIGHT. AND, SIR, LESLIE, YOUR DAUGHTER, NEVER CAME TO VISIT YOU AT ANY OF YOUR WORKSITES EVER, DID SHE, SIR?

A. NO, MA'AM.

Q. YOU WERE A BUSINESS AGENT, I BELIEVE YOU TOLD US, FROM 1960 TO 1964; IS THAT RIGHT?

A. YES, MA'AM.

Q. AND LESLIE WOULD HAVE BEEN A TODDLER DURING THOSE YEARS, RIGHT FROM HER INFANCY TO ABOUT FIVE YEARS OLD?

A. WOULD YOU REPEAT THE FIRST PART OF THAT.

Q. SURE.
SHE WOULD HAVE BEEN A TODDLER --

A. PART OF THE TIME.

Q. -- UP UNTIL ABOUT FIVE YEARS OLD; CORRECT?

A. YES, MA'AM.

Q. AND I THINK YOU HAVE ALREADY TOLD US YOU WORE A BUSINESS SUIT DURING THAT TIME PERIOD; IS THAT RIGHT, SIR?
WHEN YOU WERE A BUSINESS AGENT FOR THE UNION, YOU WORE A SUIT AND TIE TO WORK?

A. YES, MA'AM.

Q. AND YOU NEVER NOTICED THAT YOUR BUSINESS SUIT WAS EVER DUSTY; IS THAT RIGHT, SIR?

A. NO, MA'AM.

Q. AND THAT WAS TRUE EVEN AFTER YOU VISITED SOME OF THESE INDUSTRIAL FACILITIES THAT YOU TOLD US ABOUT; ISN'T THAT RIGHT?

A. YES, MA'AM.

Q. ALL RIGHT, SIR. WHEN YOU WERE DONE, CAME HOME

1844

FROM WORKING AS A BUSINESS AGENT AND TOOK YOUR SUIT OFF, YOU HUNG THAT SUIT IN THE GARAGE; ISN'T THAT TRUE?

A. AT TIMES, YES, MA'AM.

Q. AND SOME OF THOSE SUITS WERE ACTUALLY TAKEN TO THE DRY CLEANER RATHER THAN LAUNDERED AT HOME; ISN'T THAT TRUE?

A. ALL OF THE SUITS WENT TO THE DRY CLEANERS.

Q. ALL RIGHT. AND AFTER YOU WERE DONE BEING A BUSINESS AGENT, SIR, I BELIEVE YOU TOLD US YOU WENT TO R.E. MACK THEN --

A. YES, MA'AM.

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Q. -- AS A FOREMAN.
AND THERE, YOU SAID YOU WORKED IN CLEAN ROOMS AND CLEAN HOUSES; ISN'T THAT RIGHT, SIR? SO YOU WEREN'T WEARING OVERALLS AT THE TIME THAT YOU WERE WORKING FOR R.E. MACK?
A. NO, MA'AM.
MR. BROWN: OBJECTION. COMPOUND. I DON'T KNOW WHAT THAT QUESTION WAS.
THE COURT: I'M GOING TO STRIKE THE LAST ANSWER BECAUSE I'M NOT SURE WHICH OF THE TWO QUESTIONS HE WAS ANSWERING. BUT IT'S WITHOUT PREJUDICE TO YOUR ASKING EITHER OR BOTH OF THEM AGAIN.
MS. MASON: YES. THANK YOU, YOUR HONOR. I APOLOGIZE.
Q. MR. WHITTEKER, ONCE YOU WERE FINISHED BEING A BUSINESS AGENT, YOU THEN WENT TO WORK AS A RESIDENTIAL PLUMBER, AND YOU ALSO WORKED AT INDUSTRIAL FACILITIES AND COMMERCIAL FACILITIES; ISN'T THAT WHAT YOU TOLD US?

1845

A. IN A PERIOD OF TIME, YES, MA'AM.
Q. AND THAT BEGAN IN ABOUT 1965; ISN'T THAT CORRECT?
A. '64.
Q. '64.
LESLIE WOULD HAVE BEEN ABOUT FIVE YEARS OLD AT THE TIME?
A. YES, MA'AM.
Q. ALL RIGHT. AND THEN, IN 1969, YOU WENT TO WORK FOR THE ORMOND BEACH STEAM PLANT; CORRECT, SIR?
A. YES, MA'AM.
Q. AND AT THAT TIME, LESLIE WAS ABOUT 10 YEARS OLD; IS THAT RIGHT?
A. COULD HAVE BEEN 10.
Q. AND SIR, AT YOUR VARIOUS PLUMBING JOBS OR PIPEFITTING JOBS, YOU WORE WORK CLOTHES TO WORK; IS THAT CORRECT?
A. NOT TO WORK. AT WORK.
Q. YOU WORE JEANS AND A SHIRT TO WORK; CORRECT?
A. YES, MA'AM.
Q. AND THEN YOU PUT OVERALLS ON ONCE YOU GOT TO WORK; ISN'T THAT RIGHT, SIR?
A. YES, MA'AM.
Q. AND SIR, WHEN YOU CAME HOME IN THE EVENING FROM THOSE JOBS, YOU WOULDN'T WEAR YOUR OVERALLS HOME; IS THAT CORRECT?
A. NO, MA'AM.
Q. YOU'D JUST WEAR YOUR WORK CLOTHES HOME; CORRECT?
A. YES, MA'AM.

1846

Q. AND SIR, IF YOUR WORK CLOTHES GOT PARTICULARLY DIRTY OR DUSTY, YOU'D BLOW THEM OFF WITH AN AIR HOSE BEFORE YOU RETURNED HOME; IS THAT RIGHT?
A. YES, MA'AM.
Q. IN FACT, THAT WAS YOUR USUAL PRACTICE?
A. YES, MA'AM.
Q. SIR, WHEN YOU CAME HOME IN THE EVENING WITH YOUR WORK CLOTHES ON, YOU CHANGED OUT OF THOSE WORK CLOTHES, WOULDN'T YOU, SIR, AND NOT WEAR THEM AROUND THE HOUSE; ISN'T THAT RIGHT?
A. YOU MEAN MY JEANS AND SHIRT?
Q. YES.
A. YES.
Q. YOU WOULD CHANGE OUT OF THEM WHEN YOU GOT HOME?
A. YES, MA'AM.
Q. AND YOUR OVERALLS, YOU'D BRING THEM HOME FROM

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TIME TO TIME TO BE LAUNDERED; ISN'T THAT TRUE?
A. YES, MA'AM.
Q. ALL RIGHT, SIR.
AND YOU WOULDN'T BRING THEM HOME EVERY NIGHT; IS THAT RIGHT?
A. NO, MA'AM.
Q. AND ASIDE FROM YOUR DAUGHTER LESLIE, YOU HAVE FIVE OTHER CHILDREN?
A. YES, MA'AM.
Q. AND ALL OF YOUR CHILDREN RESIDED WITH YOU UP UNTIL THE TIME THEY COMPLETED HIGH SCHOOL; IS THAT RIGHT?
A. I DIDN'T QUITE UNDERSTAND THAT ONE.

1847

Q. YOUR OTHER CHILDREN IN ADDITION TO LESLIE, THEY ALL LIVED WITH YOU UP UNTIL THE TIME THEY COMPLETED HIGH SCHOOL; ISN'T THAT RIGHT?
A. YES, MA'AM.
Q. AND IN FACT, SOME OF THEM FROM TIME TO TIME CAME BACK TO LIVE WITH YOU EVEN AFTER THEY HAD GRADUATED FROM HIGH SCHOOL; ISN'T THAT RIGHT?
A. A TIME OR TWO.
Q. AND YOU HAVE ONE SON, MICHAEL, WHO WOULD ACTUALLY GO WITH YOU, VISIT SOME OF YOUR WORKSITES; ISN'T THAT RIGHT, SIR?
A. HE WORKED WITH ME A LITTLE BIT.
Q. AND SOME OF YOUR CHILDREN IN ADDITION TO LESLIE WERE ALSO SMOKERS OR ARE SMOKERS; ISN'T THAT TRUE?
A. MA'AM?
Q. YOU HAVE CHILDREN OTHER THAN LESLIE WHO SMOKE; ISN'T THAT RIGHT, SIR?
A. I DIDN'T KNOW SHE SMOKED.
Q. CORRECT. WE'LL GET TO THAT IN A MINUTE.
BUT SOME OF YOUR OTHER CHILDREN IN ADDITION TO LESLIE SMOKED; IS THAT TRUE?
A. WE DIDN'T KNOW IT AT THAT TIME.
Q. DID REBECCA SMOKE?
A. REBECCA.
Q. AND KEN AS WELL?
A. NO.
Q. YOU DON'T KNOW WHETHER KEN WORKED?
A. KENNY NEVER DID SMOKE.

1848

Q. AND NONE OF YOUR CHILDREN HAVE MEDICAL CONDITIONS RELATED TO ASBESTOS, DO THEY, SIR?
A. WOULD YOU REPEAT THAT.
Q. SURE. NONE OF YOUR OTHER CHILDREN HAVE MEDICAL CONDITIONS THAT ARE RELATED IN ANY WAY TO ASBESTOS; ISN'T THAT RIGHT?
A. NOT THAT I KNOW OF.
Q. AND YOU HAVE BEEN MARRIED TO YOUR WIFE FOR HOW LONG, SIR?
A. WE WERE MARRIED IN 1945. SO THAT MAKES IT 50 -- ALMOST 56 YEARS.
Q. A LONG TIME.
AND HAVE YOU LIVED TOGETHER THAT ENTIRE TIME, SIR?
A. YES, MA'AM.
Q. AND SHE ALWAYS DID YOUR LAUNDRY; ISN'T THAT RIGHT, SIR?
A. YES.
Q. AND YOUR WIFE DOESN'T HAVE ANY ASBESTOS-RELATED DISEASE EITHER, DOES SHE, SIR?
A. SHE HASN'T TOLD ME, IF SHE DOES.

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Q. SIR, LET'S TALK A LITTLE BIT ABOUT LESLIE, YOUR DAUGHTER.
SHE FINISHED HIGH SCHOOL IN TWO YEARS; IS THAT RIGHT?
A. I BELIEVE IT WAS THREE YEARS.
Q. HIGH SCHOOL, AT THE TIME LESLIE WENT TO SCHOOL, SIR, WAS 10TH, 11TH, 12TH GRADE; ISN'T THAT RIGHT?

1849

A. YES. TWO YEARS, THEN.
Q. SHE FINISHED A YEAR EARLY, DIDN'T SHE, SIR?
A. YES, MA'AM.
Q. AND THAT WAS A DECISION THAT SHE MADE, WASN'T IT, SIR?
A. YES, MA'AM.
Q. AND YOU WOULD DESCRIBE LESLIE, EVEN AS A YOUNG GIRL, AS SOMEONE WHO WOULD WORK HARD FOR SOMETHING SHE WANTED; ISN'T THAT RIGHT, SIR?
A. YES, MA'AM.
Q. AND IF SHE SET HER MIND TO SOMETHING, SHE WAS USUALLY ABLE TO ACCOMPLISH IT, WASN'T SHE, SIR?
A. YES, MA'AM.
Q. YOUR HOUSE RULE FOR YOUR CHILDREN TO BE ON THEIR OWN, YOU INSISTED THEY GRADUATE FROM HIGH SCHOOL FIRST; ISN'T THAT RIGHT?
A. THAT'S RIGHT.
Q. THAT WAS A HOUSE RULE; ISN'T THAT RIGHT, SIR?
A. YES, MA'AM.
Q. AND IN FACT, YOU HAD OTHER HOUSE RULES AT YOUR HOME BESIDES THIS ONE, DIDN'T YOU, SIR?
A. A FEW.
Q. FOR INSTANCE, YOU ALREADY TOLD US, YOU WOULDN'T LET YOUR CHILDREN SMOKE; RIGHT?
A. THEY DIDN'T SMOKE. THEY DIDN'T GET TO WATCH TELEVISION UNTIL THEY FINISHED THEIR HOMEWORK.
Q. RIGHT.
A. AND THEY DIDN'T GET TO GO PLAY IN THE SCHOOLYARD

1850

UNTIL HOMEWORK WAS FINISHED, AND HOUSEWORK.
Q. ALL RIGHT. DIDN'T ANOTHER ONE OF YOUR HOUSE RULES, SIR, INCLUDE THAT YOU DID NOT LET YOUR CHILDREN ILLEGALLY PURCHASE CIGARETTES UNDERAGE?
A. I DIDN'T KNOW THAT WAS A HOUSE RULE, BUT WE CERTAINLY WOULDN'T LET THEM DO IT.
Q. SIR, YOU WOULDN'T ALLOW YOUR CHILDREN WHEN THEY WERE UNDER 18 YEARS OLD TO SMOKE CIGARETTES IN YOUR HOME; ISN'T THAT TRUE?
A. I WOULDN'T PUT AN AGE LIMIT ON IT, BUT THAT'S TRUE.
Q. YOU WOULDN'T LET THEM SMOKE IN YOUR HOUSE AT ALL?
A. THAT'S RIGHT.
Q. WHETHER THEY WERE 18 OR ANY OTHER AGE?
A. STILL DON'T.
Q. YOU WOULDN'T ALLOW YOUR CHILDREN TO USE ILLEGAL DRUGS; ISN'T THAT ALSO RIGHT, SIR?
A. THAT'S RIGHT.
Q. AND ANOTHER ONE OF YOUR HOUSE RULES, YOU WOULD NOT LET YOUR CHILDREN ILLEGALLY DRINK ALCOHOL UNDERAGE IN YOUR HOUSE?
AND SIR --
THE COURT: AND WHAT IS YOUR ANSWER?
THE TWO OF YOU ARE GOING TOO FAST FOR THE COURT REPORTER.
YOU DON'T HAVE AN ANSWER TO THAT QUESTION.

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MS. MASON: LET ME ASK IT AGAIN. I WILL TRY TO DO IT SLOWER.

Q. AGAIN, I APOLOGIZE IF I'M GOING TOO FAST, SIR.
ANOTHER ONE OF YOUR HOUSE RULES, YOU WOULD NOT ALLOW YOUR CHILDREN TO ILLEGALLY USE ALCOHOL UNDERAGE IN YOUR HOME; IS THAT CORRECT?
A. THAT'S CORRECT.
Q. AND SIR, YOU BELIEVED THAT YOUR CHILDREN WERE ALL VERY AWARE OF YOUR HOUSE RULES; ISN'T THAT CORRECT?
A. THAT IS CORRECT.
Q. AND SIR, YOU ALSO BELIEVED THAT LESLIE GRADUATED AT 18 AND LEFT THE HOUSE TO GET OUT FROM UNDERNEATH YOUR HOUSE RULES; ISN'T THAT RIGHT?
A. SEVENTEEN.
Q. SHE LEFT THE HOUSE AT 16.
AND YOU BELIEVE SHE DID THAT TO GET OUT FROM UNDERNEATH YOUR HOUSE RULES; ISN'T THAT CORRECT?
A. I'M MISSED PART OF THAT QUESTION.
Q. LESLIE GRADUATED AND LEFT YOUR HOME AT 16 YEARS OLD; ISN'T THAT RIGHT?
A. I BELIEVE IT WAS 17.
Q. YOU THINK SHE WAS 17 AT THE TIME.
REGARDLESS, SHE LEFT -- SHE LEFT YOUR HOUSE BEFORE SHE WAS 18; CORRECT?
A. YES, MA'AM.
Q. SHE GRADUATED FROM HIGH SCHOOL EARLY?
A. YES, MA'AM.
Q. AND YOU BELIEVE SHE LEFT YOUR HOME AND GRADUATED FROM HIGH SCHOOL EARLY IN ORDER TO GET OUT FROM UNDER YOUR HOUSE RULES; IS THAT RIGHT?

MR. BROWN: OBJECTION. "HOUSE RULES" MAKES THAT COMPOUND. THERE'S A LOT OF RULES HERE. WE ARE TALKING ABOUT WHY SHE LEFT, ALLEGEDLY.
THE COURT: WELL, ON REDIRECT, YOU CAN FLESH IT OUT, IF YOU WANT.
I'M GOING TO ALLOW THE QUESTION.
MS. MASON: Q. DO YOU REMEMBER MY QUESTION, SIR?
A. PLEASE REPEAT.
Q. SURE. WHEN LESLIE, YOUR DAUGHTER, LEFT YOUR HOME EARLY, GRADUATED EARLY FROM HIGH SCHOOL, YOU BELIEVE THAT SHE LEFT IN ORDER TO GET OUT FROM UNDERNEATH YOUR HOUSE RULES; ISN'T THAT TRUE?
A. NO, I DO NOT THINK THAT'S SO.
Q. SIR, DO YOU REMEMBER GIVING A DEPOSITION IN THIS CASE?
A. NO, I DON'T REMEMBER THAT.
Q. DO YOU REMEMBER COMING TO A ROOM IN OJAI AND --
A. OH, YES I REMEMBER GIVING A DEPOSITION.
Q. YES. DO YOU REMEMBER YOUR DEPOSITION IN THIS CASE, SIR?
A. I COULD HAVE SAID THAT, BUT I DON'T REMEMBER.
Q. MR. WHITTEKER, I'M GOING TO HAND YOU YOUR DEPOSITION THAT YOU GAVE IN THIS CASE.
I PROPOSE TO READ PAGE 26, LINE 24 THROUGH 27, LINE 2.
THE COURT: THROUGH PAGE 27, LINE 2?
MS. MASON: YES.

THE COURT: ANY OBJECTION?
MR. BROWN: NO OBJECTION.

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THE COURT: YOU MAY READ.
MS. MASON: Q. MR. WHITTEKER, YOU FOUND PAGE 26?
A. (EXAMINING)
Q. HAVE YOU FOUND IT, SIR, PAGE 26?
A. YES.
Q. ALL RIGHT. I'M GOING TO BEGIN READING ON LINE 24.
"QUESTION: AS HER FATHER, WHAT BELIEF OR BELIEFS DID YOU HAVE AS TO WHY LESLIE WANTED TO BE ON HER OWN EARLY?
"ANSWER: PROBABLY TO GET OUT FROM UNDERNEATH HOUSE RULES."
DID I READ THAT CORRECTLY, SIR?
A. YES.
Q. DID I READ THAT CORRECTLY?
A. I SEE IT. AND MY ANSWER --
Q. SIR, DID I READ THAT CORRECTLY?
A. YES, MA'AM.
Q. THANK YOU.
MR. WHITTEKER, LET'S CHANGE TOPICS BRIEFLY AND TALK ABOUT WHAT YOU KNEW ABOUT SMOKING AND WHEN YOU KNEW IT, SIR.
ISN'T IT TRUE, MR. WHITTEKER, THAT YOU FIRST HEARD THAT SMOKING CIGARETTES WAS BELIEVED TO BE ASSOCIATED WITH DISEASE WHEN YOU WERE IN THE NAVY IN WORLD WAR II?

1854

A. YOU ARE GOING TO HAVE GET CLOSER, BECAUSE I CAN'T HEAR YOU.
Q. I WILL MOVE UP. I WILL SPEAK UP.
IS THAT ALL RIGHT?
A. YES, MA'AM.
Q. ISN'T IT TRUE, MR. WHITTEKER, THAT YOU FIRST HEARD THAT SMOKING COULD BE ASSOCIATED WITH DISEASE WHEN YOU WERE IN THE NAVY, SIR, IN WORLD WAR II?
A. I DON'T BELIEVE I SAID THAT.
Q. YOU DON'T REMEMBER THAT, SIR?
A. I REMEMBER SAYING ABOUT SEEING SOMETHING THERE ABOUT LUNGS, BUT I DON'T REMEMBER SAYING IT WAS CAUSED BY SMOKING.
Q. ALL RIGHT, SIR.
DO YOU STILL HAVE YOUR DEPOSITION IN FRONT OF YOU?
A. YES, MA'AM.
MS. MASON: I PROPOSE TO READ ON PAGE 50.
MR. BROWN: 5-0?
MS. MASON: YES. LINE 12.
ACTUALLY, LET'S START WITH LINE 25, PAGE 50, LINE 25 THROUGH 51, LINE 7.
THE COURT: MR. BROWN?
MR. BROWN: NO OBJECTION.
THE COURT: OKAY. I'D APPRECIATE IT, THOUGH, IF YOU SPEAK UP, ONCE YOU HAVE REACHED THAT CONCLUSION.
MR. BROWN: I'M SORRY, YOUR HONOR. I WAS TRYING TO FIND IT. I WAS A LITTLE LATE.

1855

THE COURT: I THOUGHT YOU WERE WAITING FOR ME. OKAY.
MS. MASON: Q. MR. WHITTEKER, DO YOU HAVE PAGE 50 OF YOUR DEPOSITION THERE, SIR?
A. YES, MA'AM.
Q. ALL RIGHT. I'M GOING TO START READING ON LINE 25.

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"QUESTION: AND YOU LEARNED THAT SOME THOUGHT THAT SMOKING WAS ASSOCIATED WITH CAUSING NOT ONLY LUNG DAMAGE BUT ACTUAL LONG-TERM DISEASES THAT COULD LEAD TO DEATH, LIKE CANCER; CORRECT?
"ANSWER: YES.
"QUESTION: AND YOU LEARNED THAT BETWEEN '41 AND '45 IN THE SERVICE?
"ANSWER: RIGHT."
DO YOU SEE THAT, SIR? DID I READ THAT CORRECTLY, MR. WHITTEKER?

A. YES, MA'AM.

Q. ALL RIGHT. MR. WHITTEKER, YOU ALSO TAUGHT AT VENTURA COLLEGE AT SOME POINT IN TIME; IS THAT RIGHT?

A. YES, MA'AM.

Q. CAN YOU -- ARE YOU HEARING ME OKAY FROM HERE?

A. YES, MA'AM.

Q. YOU TAUGHT IN THE EVENING DIVISION AT VENTURA COLLEGE, DID YOU NOT?

A. YES, MA'AM.

Q. AND THAT WAS SOMETIME IN THE 1960S; IS THAT RIGHT?

1856

A. YES, MA'AM.

Q. ALL RIGHT, SIR. WHAT COURSES DID YOU TEACH THERE?

A. PART OF THEM WERE RELATED TO THE BUILDING TRADES, SUCH AS PLUMBING, PIPEFITTING, WELDING, HOT AIR WELDING, AND RELATED SUBJECTS TO BUILDING TRADES.

Q. ALL RIGHT. AND ONE OF THOSE CLASSES, SIR, ISN'T IT TRUE THAT THE COLLEGE HAD SOME PEOPLE COME TO YOUR CLASS AND SHOW A FILM REGARDING SMOKING?

A. NOT IN THE APPRENTICE PART OF IT OR BUILDING TRADE. IT WAS IN A DIFFERENT CLASS.

Q. BUT YOU REMEMBER --

A. YES, MA'AM.

Q. -- AT VENTURA COLLEGE, THEY SHOWED A FILM ABOUT SMOKING DURING ONE OF YOUR COURSES; IS THAT RIGHT?

A. I DON'T RECALL SAYING IT WAS ABOUT SMOKING.
I RECALL THAT IT WAS -- THEY SHOWED A PICTURE OF LUNGS, BUT I DON'T RECALL SAYING THAT IT WAS CAUSED BY SMOKING.

Q. AND SIR, YOU DON'T REMEMBER THAT THAT FILM SHOWED A DAMAGED LUNG AND THE FILM SAID THAT THAT DAMAGE TO THE LUNG WAS CAUSED BY SMOKING?

A. YES, I REMEMBER ABOUT THE DAMAGED LUNG, BUT I SAID I DIDN'T RECALL THAT IT WAS CAUSED BY SMOKING.

Q. ALL RIGHT, SIR.
MAYBE WE COULD LOOK YOUR DEPOSITION. IT MIGHT HELP REFRESH YOUR RECOLLECTION.

A. THAT COULD BE SO.

1857

Q. ALL RIGHT. LET ME FIND WHERE IT IS.
OKAY, SIR. PAGE 59, LINE 22, THROUGH PAGE 60, LINE 8.
SIR, LET ME READ THIS TO YOU --
MR. BROWN: LINE 22?
MS. MASON: LINE 22.
MR. BROWN: AND 60, LINE 8.
OKAY.
THE COURT: OKAY. AND I UNDERSTAND THAT "OKAY" MEANS NO OBJECTION?
MR. BROWN: THAT SHOWS A SOUND ANALYSIS, YOUR HONOR.

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THE COURT: OKAY. YOU CAN DO THAT THROUGHOUT THE TRIAL.
MS. MASON: Q. SIR, LET ME READ THIS TO YOU AND SEE IF THIS DOESN'T REFRESH YOUR RECOLLECTION. YOU WERE ASKED THE FOLLOWING.
"QUESTION: AH. OKAY. SO THE CLASSES THAT YOU TAUGHT AT VENTURA COLLEGE AT SOME TIME INCLUDED THEM AT THE COLLEGE, BRINGING TO THE CLASS THIS FILM ON SMOKING OR WHAT DAMAGE COULD BE CAUSED BY SMOKING?
"ANSWER: I REMEMBER ONE TIME, YES.
"QUESTION: AND THAT WAS CONSISTENT, AT LEAST, WITH WHAT YOU HAD BEEN EXPOSED TO BACK IN THE '40S IN THE NAVY, THAT IS --
"ANSWER: RIGHT.
"QUESTION: -- THE FILM INCLUDED AT LEAST A

1858

SCENE OF A LUNG THAT HAD BEEN CHANGED BY SMOKING?
"ANSWER: YES."
DO YOU REMEMBER THAT NOW, SIR?
A. YES, MA'AM.
Q. ALL RIGHT, THANK YOU.
AND AGAIN, SIR, YOU WERE TEACHING AT VENTURA COLLEGE SOMETIME IN THE 1960S; IS THAT RIGHT?
A. YES, MA'AM.
Q. ALL RIGHT, SIR.
PRIOR TO LESLIE BEGINNING JUNIOR HIGH SCHOOL, YOU REMEMBER THERE BEING PUBLIC SERVICE ANNOUNCEMENTS ON THE TELEVISION REGARDING THE HEALTH RISKS OF SMOKING; IS THAT RIGHT?
A. I DON'T RECALL THAT.
Q. YOU DON'T RECALL THAT EITHER, SIR?
A. I COULD HAVE SAID IT, BUT I DON'T RECALL IT NOW.
Q. LET ME HELP YOU OUT A LITTLE BIT HERE.
DO YOU HAVE YOUR DEPOSITION THERE, MR. WHITTEKER, PAGE 63, LINE 9 THROUGH 13?
MR. BROWN: OKAY. OKAY.
MS. MASON: Q. DO YOU HAVE IT THERE IN FRONT OF YOU, MR. WHITELEY?
A. YES.
Q. I'M GOING TO BEGIN READING WITH THE QUESTION ON LINE 9.
"QUESTION: BEFORE LESLIE ENTERED JUNIOR HIGH SCHOOL, CAN YOU SAY THAT THERE CERTAINLY WERE TIMES WHEN IT WAS PRESENTED AS A PUBLIC SERVICE

1859

ANNOUNCEMENT ON THE TELEVISION?
"ANSWER: YES, I KNOW THAT."
DOES THAT HELP YOU REMEMBER, SIR?
A. (EXAMINING)
WHAT PAGE ARE YOU ON?
Q. I'M ON PAGE 63.
A. 62?
Q. 63.
A. ALL RIGHT.
Q. LINE 9.
A. (EXAMINING)
YES, I REMEMBER SAYING THAT.
Q. ALL RIGHT. THANK YOU, SIR.
AND SIR, WHILE LESLIE WAS GROWING UP, YOU CONTRIBUTED MONEY TO LOCAL HEALTH ORGANIZATIONS, DIDN'T YOU?
A. YES, MA'AM.
Q. AND AS A RESULT, THOSE LOCAL HEALTH ORGANIZATIONS

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SENT LITERATURE TO YOUR HOME; IS THAT RIGHT?
A. AT TIMES.
Q. AND, FOR EXAMPLE, WHILE LESLIE WAS GROWING UP, YOU ACTUALLY RECEIVED LITERATURE IN YOUR HOME FROM THE AMERICAN CANCER SOCIETY; ISN'T THAT TRUE?
A. I BELIEVE THAT'S RIGHT.
Q. AND SIR, LET'S TALK FOR A MINUTE AND TURN OUR ATTENTION TO LESLIE'S SMOKING.
NOW, YOU'VE ALREADY TOLD US THAT YOU WERE NOT AWARE THAT SHE WAS SMOKING AT 13 YEARS OLD; IS THAT TRUE?
A. THAT'S RIGHT.

1860

Q. AND SO, SIR, I TAKE IT THAT YOU WERE NOT AWARE THAT SHE WAS SUSPENDED FROM HIGH SCHOOL FOR SMOKING?
A. NO, I WAS NOT.
Q. AND SHE NEVER SMOKED AROUND YOU, DID SHE, SIR, BEFORE SHE MOVED OUT OF THE HOUSE AT 16 OR 17 YEARS OLD?
A. NO.
Q. IN FACT, THE FIRST TIME YOU DISCOVERED SHE WAS SMOKING, SHE HAD ALREADY MARRIED HER FIRST HUSBAND, DEAN MOORE; IS THAT RIGHT?
A. THAT'S RIGHT.
Q. AND IN FACT, YOU DISCOVERED SHE WAS SMOKING AT A FAMILY VACATION IN HAWAII; IS THAT RIGHT?
A. THAT'S RIGHT.
Q. AND AT THAT TIME, LESLIE WAS 18 YEARS OLD; ISN'T THIS TRUE, SIR?
A. I'LL FOLLOW YOU SAYING SHE WAS 18. I'M NOT SURE.
Q. ALL RIGHT. AND SIR, EVEN NOW, YOU DON'T ALLOW YOUR CHILDREN TO SMOKE IN YOUR HOME; ISN'T THAT RIGHT?
A. THAT'S RIGHT.
Q. IN FACT, LESLIE TRIED TO SMOKE IN YOUR HOME AT ONE TIME, AND I BELIEVE, AS YOU SAID, YOUR WIFE ESCORTED HER TO THE DOOR; IS THAT RIGHT?
A. YES.
Q. SIR, YOU SAID THAT SOMETIME LATER IN LIFE, YOU HAD DISCUSSIONS WITH LESLIE ABOUT THE HEALTH RISKS ASSOCIATED WITH SMOKING; ISN'T THAT RIGHT?
A. YES, MA'AM.
Q. BUT THE FIRST TIME YOU FOUND OUT SHE WAS SMOKING

1861

IN HAWAII, YOU DID NOT HAVE A CONVERSATION WITH HER THEN; ISN'T THAT TRUE?
A. THAT'S TRUE.
Q. AND MR. WHITTEKER, YOU NEVER HAD THAT DISCUSSION WITH LESLIE, BECAUSE YOU FELT THAT SHE HAD BEEN EXPOSED TO INFORMATION ABOUT THE HEALTH RISKS OF SMOKING ALREADY AND THAT IT WAS UP TO HER TO MAKE A DECISION AS TO WHETHER TO SMOKE OR NOT TO SMOKE; IS THAT RIGHT?
A. AFTER SHE LEFT OUR HOUSE.
Q. AND THAT'S WHY YOU NEVER HAD A CONVERSATION WITH HER THE FIRST TIME YOU DISCOVERED THAT SHE WAS SMOKING; IS THAT TRUE?
A. THAT'S RIGHT.
Q. FROM THE FIRST TIME, SIR, THAT YOU HAD KNOWLEDGE THAT YOUR DAUGHTER LESLIE WAS SMOKING UP UNTIL THE TIME SHE QUIT, SHE NEVER TOLD YOU SHE WAS ADDICTED, DID SHE, SIR?
A. NO.
Q. AND IN FACT, SHE NEVER SUGGESTED TO YOU THAT SHE COULDN'T QUIT SMOKING; IS THAT RIGHT?
A. THAT'S RIGHT.
Q. IN FACT, SHE NEVER EVEN SUGGESTED TO YOU THAT SHE WAS THINKING ABOUT SMOKING; ISN'T THAT ALSO RIGHT?

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A. THAT'S ALSO RIGHT.
Q. IN FACT, SIR, YOU WERE THE ONE THAT SUGGESTED TO YOUR DAUGHTER THAT SHE OUGHT TO THINK ABOUT QUITTING SMOKING; CORRECT?
A. YES, MA'AM.
MS. MASON: THANK YOU, MR. WHITTEKER. I HAVE

1862

NOTHING ELSE.
MR. BROWN: JUST A FEW, YOUR HONOR.
THE COURT: ANYBODY ELSE?
MR. BROWN: I'M SORRY. I FORGOT ABOUT THE WORLD.
THE COURT: MR. ROSSE.
MR. BROWN: OH, SORRY.

CROSS-EXAMINATION

BY MR. ROSSE: Q. GOOD MORNING, MR. WHITTEKER.
A. GOOD MORNING.
Q. I JUST HAVE A FEW QUESTIONS ABOUT YOUR WORK HISTORY.
I THINK WE ESTABLISHED THAT YOU HAD LEFT MANDALAY BAY, AT LEAST WORKING AT MANDALAY BAY, IN JUNE OF 1959; IS THAT CORRECT?
A. I BELIEVE THAT'S RIGHT.
Q. AND THEN, BETWEEN THE TIME YOU LEFT MANDALAY BAY AND YOU BECAME A BUSINESS AGENT, DID YOU WORK FOR SILVERBERG PLUMBING?
A. YES, SIR.
Q. AND DURING THAT PERIOD, I BELIEVE YOU FABRICATED CAST-IRON SEWER PIPE?
A. YES, SIR.
Q. THAT WASN'T INSULATED, WAS IT?
A. NO, SIR.
Q. AFTER THAT JOB, WHICH RAN FROM JUNE OF '59 TO

1863

SOMETIME IN '60, YOU BECAME A BUSINESS AGENT?
A. YES, SIR.
Q. 90 PERCENT OF THE SITES YOU VISITED AS A BUSINESS AGENT WERE RESIDENTIAL SITES?
A. YES, SIR.
Q. YOU ONLY VISITED THE INDUSTRIAL SITES A HANDFUL OF TIMES?
A. WHEN I NEEDED TO.
Q. I BELIEVE YOU WENT TO WORK IN 1964 FOR R.E. MACK?
A. (EXAMINING)
YES, SIR.
Q. AND YOU WORKED FOR R.E. MACK UNTIL 1967?
A. THAT'S RIGHT.
Q. AND DURING THAT ENTIRE TIME, YOU WERE A FOREMAN ON THE FINISH CREW FOR RESIDENTIAL HOUSING?
A. YES, SIR.
Q. THE FINISH CREW WENT IN AND DID, I THINK YOU SAID, TOILETS, SHOWERS, OTHER FINISH PLUMBING WORK?
A. YES, SIR.
Q. SO THE WALLS WERE ALREADY IN THE MAJORITY OF THE HOUSES DONE AT THE TIME YOU GO IN; CORRECT?
A. YES.
Q. 1967 TO '69, I BELIEVE YOU WORKED FOR SEVERAL DIFFERENT EMPLOYERS, MOSTLY SHORT JOBS?
A. YES, SIR.
Q. I THINK YOU MENTIONED THAT YOU WORKED FOR A J.A. MITCHELL AT ROCKETDYNE?

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28 A. YES, SIR.
1864
1 Q. DURING THE 1967 TO '69 PERIOD WHEN YOU WORKED AT
2 ROCKETDYNE FOR ONE PERIOD, WHAT DID YOU DO?
3 A. I BELIEVE THAT THAT WAS WE REPLACED A LARGE
4 GALVANIZED WATER LINE.
5 Q. THAT WAS GALVANIZED PIPE?
6 A. YES, MA'AM.
7 Q. WE SWITCHED.
8 A. I APOLOGIZE.
9 Q. AND THAT PIPE WAS NOT INSULATED; IS THAT CORRECT?
10 A. NO.
11 Q. THERE WERE NO INSULATORS IN YOUR PRESENCE AT THAT
12 TIME WHEN YOU WORKED AT ROCKETDYNE?
13 A. RIGHT. THERE WAS ONLY THREE OF US.
14 Q. AND THAT WAS THE ONLY TIME THAT YOU WORKED AT THE
15 ROCKETDYNE FACILITY BETWEEN 1967 AND 1969?
16 A. ACCORDING TO MY -- I DON'T RECALL EVERYTHING, BUT
17 ACCORDING TO THIS STATEMENT, YES.
18 Q. YOU DON'T HAVE ANY RECOLLECTION AS YOU SIT HERE
19 TODAY OF ANYTHING DIFFERENT, DO YOU?
20 A. NO, SIR.
21 Q. OKAY. SOME OF THE OTHER JOBS YOU WORKED AT
22 DURING THAT PERIOD, YOU WORKED AT A SCHOOL FOR A FEW
23 MONTHS -- DO YOU RECALL DOING THAT? -- FOR MAT'S PLUMBING?
24 A. RIGHT.
25 Q. AND I BELIEVE THAT WAS ALSO FINISH WORK AT THE
26 SCHOOL?
27 A. YES, SIR.
28 Q. ONCE AGAIN, YOU WERE INSTALLING TOILETS, URINALS,
1865
1 SINKS, THAT KIND OF WORK?
2 A. YES.
3 Q. THE MAJORITY OF THE JOB IS ALREADY DONE WHEN
4 YOU'RE IN THERE?
5 A. THAT'S RIGHT.
6 Q. THEN YOU WORKED FOR A NAT TAYLOR & SONS.
7 AND THIS WAS RESIDENTIAL WORK?
8 A. RESIDENTIAL.
9 Q. YOU WERE INSTALLING WATER LINES?
10 A. WATER LINES.
11 Q. THERE WASN'T ANY INSULATION ON THAT WATER LINE,
12 WAS THERE?
13 A. NO.
14 Q. THEN IN 1969, YOU WENT TO WORK AT ORMOND BEACH
15 POWER PLANT?
16 A. YES, SIR.
17 Q. WHEN YOU FIRST ARRIVED IN 1969, IT WAS EARLY IN
18 THE JOB; IS THAT CORRECT?
19 A. IT WAS WHAT?
20 Q. THAT WAS WHEN THE JOB HAD JUST STARTED?
21 A. YES, SIR.
22 Q. THAT WAS NEW CONSTRUCTION?
23 A. HE STEEL WAS UP.
24 Q. OKAY. HOW MANY UNITS ARE THERE AT ORMOND?
25 A. TWO.
26 Q. WERE THEY BUILDING BOTH UNITS AT THE SAME TIME?
27 A. PARTIALLY.
28 Q. SO DID THEY START UNIT 1 FIRST AND THEN SOMETIME
1866
1 LATER THEY STARTED UNIT 2?
2 A. YES, SIR.
3 Q. WHEN YOU STARTED THERE IN 1969, THERE WEREN'T ANY

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INSULATORS PRESENT INITIALLY, WERE THREE?
A. NO, SIR.
Q. THEY CAME ON TO THE JOB LATER?
A. YES.
Q. YOU TESTIFIED THAT YOU WORKED NEAR THE INSULATORS ONCE THEY ARRIVED?
A. YES.
Q. LET ME GO BACK FOR A SECOND.
WHEN YOU STARTED ON THE JOB, YOU WERE A PIPEFITTER FOREMAN?
A. YES, SIR.
Q. AND FOREMEN FOR THE INSULATION -- FOR THE PIPEFITTERS UNION, THEY DON'T DO HANDS-ON WORK, DO THEY?
A. CORRECT.
Q. THEY SUPERVISE OTHER PEOPLE?
A. YES, SIR.
Q. YOU DON'T GO IN THERE -- YOU DON'T DO ANY OF THE ACTUAL PIPE WORK YOURSELF?
A. NO, SIR.
Q. AS THE JOB GOT BIGGER, YOU MOVED UP TO GENERAL FOREMAN AND THEN SUPERINTENDENT?
A. YES, SIR.
Q. ONCE AGAIN, YOU DON'T DO ANY HANDS-ON WORK AS A GENERAL FOREMAN OR A SUPERINTENDENT; IS THAT CORRECT?
A. ONLY BLUEPRINT WORK.

1867

Q. BLUEPRINT WORK.
YOU DON'T GO IN -- YOU'RE NOT MANIPULATING A PIPE OR TOUCHING INSULATION OR ANYTHING ALONG THOSE LINES?
A. NO, SIR.
Q. I THINK YOU TESTIFIED THAT YOUR CREWS WORKED NEAR THE INSULATORS?
A. YES, SIR, ALWAYS.
Q. YOU WOULD GO VISIT YOUR CREWS AND TELL THEM WHAT TO DO, INSTRUCT THEM WHERE TO RUN THE PIPE, PUT THE VALVES, ETCETERA?
A. I INSTRUCTED MY FOREMEN, AND MY FOREMEN INSTRUCTED THE CREW.
Q. BUT YOU WERE WORKING NEAR THE INSULATORS OFF AND ON?
A. AROUND THEM.
Q. AROUND THEM.
NOW, THE INSULATION CREWS, THEY WERE HIRED BY A SUBCONTRACTOR OR EMPLOYED BY A SUBCONTRACTOR?
A. AS FAR AS I KNOW, YES.
Q. I BELIEVE THAT WHEN YOU WERE ASKED AT YOUR DEPOSITION WHO THAT SUBCONTRACTOR MIGHT BE, THORPE INSULATION WAS THE COMPANY THAT CAME TO MIND?
A. I SAID THAT THE NAME THORPE CAME TO MIND BECAUSE THEY WHERE USUALLY ON OTHER JOBS.
Q. YOU SAID THEY WERE USUALLY ON THE BIGGER JOBS; RIGHT?
A. BIGGER JOBS.
Q. THE BIGGER JOBS YOU WORKED WOULD HAVE BEEN ORMOND

1868

BEACH, MANDALAY BAY, MAYBE ROCKETDYNE?
A. ROCKETDYNE. THE PAPER PLANT.
Q. AND THE PAPER PLANT.
THOSE WOULD HAVE BEEN THE BIGGER JOBS DURING YOUR CAREER?
A. YES.
Q. IN FACT, SIR, PRIOR TO YOUR DEPOSITION, YOU HAD NEVER HEARD OF METALCLAD INSULATION COMPANY, HAD YOU?

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A. I DON'T THINK I SAID THAT.
I THINK THE QUESTION WAS: DID I -- WHAT DID I UNDERSTAND "METALCLAD" WAS?
AND I THOUGHT THEY WERE THE ONES THAT PUT THE METAL ON THE OUTSIDE OF THE INSULATION.
Q. SIR --
A. I DON'T REALLY KNOW THAT, BUT I'M SURE THAT'S WHAT --
Q. LET ME REFER TO YOUR DEPOSITION, PAGE 141, LINE 2 THROUGH LINE 11.
SIR, DO YOU RECALL MY PRESENCE AT THE DEPOSITION?
A. SIR?
Q. DO YOU RECALL ME BEING AT YOUR DEPOSITION?
A. YES, I DO.
Q. YOU RECALL ME ASKING YOU QUESTIONS ABOUT METALCLAD?
A. YES.
Q. AND WHEN I ASKED YOU IF YOU'D HEARD OF METALCLAD, YOU ASSOCIATED THAT WITH THE METAL THAT THEY PUT AROUND THE INSULATION?

1869

A. YES.
Q. AND THEN I ASKED YOU A QUESTION: HAD YOU EVER, IN OTHER WORDS, HEARD OF METALCLAD INSULATION COMPANY.
DO YOU RECALL THAT?
A. I SAID NO.
Q. AT YOUR DEPOSITION, YOU SAID THAT YOU HAD NEVER HEARD OF METALCLAD INSULATION COMPANY OR METALCLAD INSULATION CORPORATION; IS THAT CORRECT?
A. YES.
Q. I THINK YOU'VE ALSO SAID THAT THERE WAS -- IN ADDITION TO YOUR EMPLOYER, BECHTEL WAS ALSO A GENERAL CONTRACTOR AT THAT SITE?
A. YES.
Q. AND THERE WERE DIFFERENT INSULATORS WORKING ON THE BECHTEL PORTION OF THE JOB?
A. I DON'T KNOW THAT IT WAS A DIFFERENT COMPANY, BUT THERE WERE DIFFERENT -- TWO GROUPS OF INSULATORS.
Q. OKAY. AND YOU DON'T KNOW WHO EMPLOYED THOSE INSULATORS?
A. NO, SIR.
Q. COULD IT HAVE BEEN BECHTEL?
A. IT COULD HAVE BEEN BECHTEL. THEY ALSO EMPLOYED EVERYBODY.
Q. BECHTEL USUALLY EMPLOYED ALL OF THE CREW?
A. ALL OF THE TRADES.
Q. THAT WAS THE COMMON PRACTICE FOR BECHTEL DURING THE TIME YOU WORKED IN THE TRADES?
A. YES, SIR.

1870

Q. SIR, AS A SUPERVISOR AND A FOREMAN, I BELIEVE YOU STATED THAT YOUR CLOTHES AT THE END OF THE DAY WERE FAIRLY CLEAN, WEREN'T NECESSARILY DUSTY?
A. YES, SIR.
Q. AND THE DUST THAT YOU TALKED ABOUT BEING ON THIS SITE, THAT WAS CREATED BY NUMEROUS TRADES, NOT JUST THE INSULATORS?
A. YES.
Q. YOU WERE ASKED -- I THINK YOU TESTIFIED THAT YOU CHANGED YOUR CLOTHES DURING THIS PERIOD AS SOON YOU GOT HOME FROM WORK?
A. USUALLY.
Q. DURING THIS TIME FRAME, YOU HAD MOVED TO OJAI; IS

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THAT CORRECT?
A. YES, SIR.
Q. AT THAT TIME, YOU NO LONGER KEPT YOUR DIRTY CLOTHES IN THE GARAGE, DID YOU?
A. NO, SIR.
Q. AFTER YOU LEFT THE ORMOND BEACH POWER PLANT, YOU HAD SEVERAL SHORT JOBS BEFORE YOU RETIRED?
A. YES, SIR.
Q. ONE OF THOSE JOBS WAS AGAIN AT ROCKETDYNE?
A. YES, SIR.
Q. I THINK EARLIER YOU TESTIFIED THAT ONE OF YOUR JOBS AT ROCKETDYNE INVOLVED WORKING ON OXYGEN LINES AND AIR LINES?
A. YES, SIR.
Q. THAT WAS THE POST-1973 JOB YOU WORKED THERE?

1871

A. (EXAMINING)
SWINERTON & WALBERG.
Q. THAT WOULD HAVE BEEN IN 1973?
A. YES, SIR.
Q. AND THAT WAS THE TIME THAT YOU WORKED WITH THE LIQUID OXYGEN LINES?
A. IT HAD LIQUID OXYGEN, LIQUID NITROGEN, COMPRESSED AIR.
Q. THE LIQUID OXYGEN AND NITROGEN LINES, THOSE ARE PRIMARILY COLD, AREN'T THEY?
A. YES.
Q. THOSE ARE THE LINES YOU SAW BEING INSULATED AT THAT TIME?
A. YES, SIR.
Q. AND ALSO, I THINK YOU WORKED FOR BECHTEL IN 1974?
A. YES, SIR.
Q. AND THAT WAS BACK AT ORMOND BEACH STEAM PLANT?
A. YES, SIR.
Q. AND ON THAT JOB, YOU WORKED OUT IN THE FIELD RUNNING OR REROUTING WATER LINES; IS THAT RIGHT?
A. YES. A LARGE WATER LINE.
Q. THAT WAS AN UNDERGROUND LINE?
A. UNDERGROUND.
Q. THAT WAS NOT INSULATED?
A. IT WAS NOT INSULATED.
Q. AND I THINK YOU WENT TO WORK FOR ALLIED LION COMPANY?
A. YES.

1872

Q. AND THAT JOB WAS IN THE OIL FIELDS?
A. IN THE OIL FIELDS.
EXCUSE ME. OIL FIELD-RELATED.
Q. DO YOU NEED SOME WATER THERE? I THINK THERE'S SOME WATER THERE (INDICATING).
THE COURT: ACTUALLY, WHY DON'T YOU LET US KNOW WHEN YOU GET TO A GOOD SPOT FOR THE MORNING RECESS. WE CAN TAKE THE MORNING RECESS.
MR. ROSSE: THIS IS FINE.
THE COURT: JUROR, LET'S TAKE A 20-MINUTE RECESS UNTIL FIVE MINUTES AFTER 11:00.
PLEASE CONTINUE TO FOLLOWING THE ADMONITION. WE'LL SEE YOU BACK AT FIVE AFTER 11:00.
(RECESS TAKEN FROM 10:45 TO 11:10 A.M.)
THE COURT: WE ARE BACK ON THE RECORD.
MR. ROSSE, YOU MAY PROCEED.
MR. ROSSE: THANK YOU YOUR HONOR.
Q. MR. WHITTEKER, I THINK WE WERE TALKING ABOUT YOUR

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JOBS YOU HAD AFTER YOU LEFT ORMOND BEACH.
AND YOU SAID YOU WORKED AT THE OIL FIELDS FOR ALLIED LION COMPANY?
A. YES, SIR.
Q. AND THAT JOB WAS A WATER TREATMENT PLANT?
A. DIFFERENT TYPES OF JOBS, BUT I DID DO THAT ONE.
Q. A COUPLE OF THE OTHER JOBS AFTER YOU LEFT ORMOND BEACH.
YOU DID SOME AIR-CONDITIONING WORK?
A. YES, SIR.

1873

Q. A COUPLE OF SMALL JOBS. THEY WERE BOTH COMMERCIAL?
A. YES, SIR.
Q. YOU DIDN'T RETURN TO ANY OTHER INDUSTRIAL SITES OTHER THAN WE'VE DISCUSSED AFTER YOU LEFT ORMOND?
A. ONE MOMENT. I'LL LOOK. (EXAMINING)
IN '76, I WORKED FOR SCOTT COMPANY FOR A FEW DAYS.
Q. YOUR DAUGHTER HAD MOVED OUT OF THE HOUSE BY 1976; IS THAT CORRECT?
A. YES.
Q. DO YOU REMEMBER AT YOUR DEPOSITION YOU WERE ASKED A LOT OF QUESTIONS ABOUT YOUR WORK HISTORY, THE CONDITIONS, YOUR CLOTHING, ETCETERA?
A. YES, SIR.
Q. YOU RECALL THAT?
A. YES, SIR.
Q. AND SINCE THE TIME OF YOUR DEPOSITION, YOU WERE ASKED TO MEET WITH SOMEONE THAT WAS HIRED BY YOUR DAUGHTER'S ATTORNEYS; IS THAT CORRECT?
A. REPEAT THAT, PLEASE.
Q. SINCE THE TIME OF YOUR DEPOSITION, YOU WERE ASKED BY YOUR DAUGHTER'S ATTORNEYS TO MEET WITH SOMEONE THAT THEY HAD SENT TO MEET YOU; IS THAT CORRECT?
DO YOU RECALL MEETING IN A RESTAURANT WITH A MR. CHARLEY AY?
A. YES, SIR.
Q. DID THEY TELL WHAT YOU THE PURPOSE OF THAT

1874

MEETING WAS?
A. NO, THEY DIDN'T.
Q. DID MR. AY DISCUSS WITH YOU POSSIBLE EXPOSURES THAT YOU COULD TALK ABOUT?
A. I'M SORRY. I MISUNDERSTOOD THE WAY YOU ASKED THE QUESTION. I THOUGHT YOU WERE ASKING ABOUT WHAT I KNEW BEFOREHAND.
NO, I DIDN'T KNOW ANYTHING BEFOREHAND, BUT WE DID DISCUSS.
Q. WHAT DID YOU DISCUSS?
A. JUST WHAT YOU GOT THROUGH SAYING.
Q. POSSIBLE EXPOSURES AT YOUR WORK HISTORY?
A. YES, SIR.
Q. AND HE TOLD YOU WHAT PRODUCTS MAY CONTAIN ASBESTOS AND HOW THE ASBESTOS WOULD BE RELEASED AND HOW YOU MAY HAVE BEEN EXPOSED?
MR. BROWN: OBJECTION. COMPOUND.
THE COURT: SUSTAINED. THAT'S ABOUT THREE QUESTIONS.
MR. ROSSE: LET ME ASK --
THE COURT: YOU CAN ACTUALLY ASK ANY ONE OF THEM.
MR. BROWN: IT'S A BAD HABIT.

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MR. ROSSE: Q. MR. AY DISCUSSED WITH YOU WHAT PRODUCTS MAY CONTAIN ASBESTOS?
A. YES.
Q. HE DISCUSSED WITH YOU WHAT PRODUCTS YOU MAY HAVE BEEN EXPOSED TO?

1875

A. YES.
Q. HE DISCUSSED WHAT TYPES OF WORK PRACTICES INSULATORS USED?
A. YES.
Q. DID YOU GET SOME IDEA WHAT THE PURPOSE OF THIS MEETING WAS?
A. NOT REALLY, BUT I LEARNED A LOT.
MR. ROSSE: THANK YOU, SIR.
THE COURT: OKAY. I THINK WE ARE BACK TO YOU, MR. BROWN.
MR. BROWN: ME?
THE COURT: YOUR TURN.
MR. BROWN: OKAY

REDIRECT EXAMINATION

BY MR. BROWN: Q. DID MR. AY WORK ON SOME OF THE SAME SITES THAT YOU WORKED ON?
A. I DON'T RECALL HIM.
Q. DO YOU RECALL TALKING ABOUT THE MANDALAY BEACH POWER PLANT WITH MR. AY?
A. I MAY HAVE.
Q. OKAY. LET ME GO BACK TO A DEPOSITION PART THAT WAS READ.
I'D LIKE TO READ A PORTION, YOUR HONOR, IN CONNECTION WITH THAT.
THE COURT: OKAY.
MR. BROWN: THE PORTION THAT WAS READ -- FIRST I'LL ASK THIS QUESTION.

1876

Q. WHEN LESLIE GRADUATED FROM HIGH SCHOOL EARLY AND LEFT AND WENT TO VIRGINIA, WHAT WAS -- DID YOU HAVE SOME UNDERSTANDING AS TO THE PRIMARY REASON WHY SHE WANTED TO GRADUATE EARLY?
A. YES. SHE TOLD ME SHE WAS GOING TO GET MARRIED.
MR. BROWN: NOW I'D LIKE TO READ THE PART THAT WAS READ.
MR. FURR: EXCUSE ME, MR. BROWN.
YOUR HONOR, I OBJECT TO THE FORM OF THE QUESTION.
THERE IS NO QUESTION PENDING. THIS IS JUST A HEARSAY RECITATION.
MR. BROWN: NO, I'M TRYING TO PUT IT IN CONTEXT.
THE COURT: HOLD ON JUST A SECOND.
WHY DON'T YOU JUST TELL US THE LINES AND THE PAGES YOU WANT TO READ. WE'LL SEE IF THERE'S AN OBJECTION, AND YOU CAN AVOID THIS KIND OF ARGUMENT.
MR. BROWN: I WAS GOING TO DO THAT.
THE COURT: YOU STARTED OUT WITH A PREDICATE TELLING US WHY YOU ARE DOING IT. YOU DON'T NEED TO TELL US WHY.
ALL YOU NEED TO TELL US IS WHAT YOU WANT TO DO. AND WE'LL SEE IF THERE'S AN OBJECTION.
MR. BROWN: I'M GOING TO READ FROM PAGE 26, LINE 10, THROUGH PAGE 27, LINE 6, WHICH WILL PICK UP THE PART THAT WAS READ. IT WILL BE IN THERE SOMEWHERE.
THE COURT: OKAY. LET'S SEE IF THERE'S AN OBJECTION.
MR. FURR: SAME OBJECTION, YOUR HONOR. THE FORM

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1877
OF THE QUESTION.
THE COURT: TO THE FORM OF THE QUESTION?
MR. FURR: IT'S A HEARSAY RECITATION. THERE'S NO QUESTION PENDING.
THE COURT: WHAT HE'S CLAIMING IS, AS I UNDERSTAND IT, YOU READ A PORTION OF THIS AND HE WANTS TO READ MORE OF IT, BECAUSE HE THINKS IT RELATES TO THE PORTION YOU READ. THAT'S WHAT I UNDERSTAND.
AND IF IT DOES RELATE TO THE PORTION YOU READ, THEN UNDER THE LAW, HE'S ALLOWED DO IT. IF IT DOESN'T, HE ISN'T.
SO IF YOU HAVE ANY OBJECTION, PROBABLY THE ONLY ONE AVAILABLE TO YOU, UNLESS THERE IS A SOME PROBLEM WITH THE QUESTIONS THEMSELVES, IS THAT IT DOESN'T RELATE TO THE SUBJECT THAT YOU READ.
I DON'T KNOW WHETHER YOU ARE MAKING THAT OBJECTION OR NOT.
MR. FURR: NO. I THOUGHT YOU HAD TO DO THAT AT THE TIME HE READ IT.
I WITHDRAW THE OBJECTION.
THE COURT: NO.
ACTUALLY -- AND FRANKLY, IT DOESN'T MAKE MUCH DIFFERENCE TO ME WHICH WAY YOU WANT TO ENGAGE IN THE PRACTICE. WE CAN DO IT EITHER WAY.
I THINK, ACTUALLY, WE OUGHT TO SET UPON ONE WAY OF DOING IT. EITHER THE OTHER SIDE CAN ASK FOR IT AT THE TIME OR THEY ASK FOR IT LATER.
IT REALLY DOESN'T MATTER WHICH. YOU ARE ENTITLED
1878
TO DO IT EITHER WAY.
MY PREFERENCE WOULD BE PROBABLY TO DO IT, IF YOU ARE ABLE TO PICK IT UP, AT THE SAME TIME, BECAUSE THEN WE HAVE IT IN CONTEXT. WE DON'T HAVE TO GO BACK AND REREAD IT.
SO MY PREFERENCE WOULD BE TO DO IT AT THE SAME TIME. BUT SOMETIMES, COUNSEL DON'T REALIZE UNTIL LATER THAT THEY WANT TO READ SOMETHING.
MR. BROWN: I THINK YOUR PREFERENCE IS PROBABLY BETTER, IF YOU HAVE THE ABILITY AND THE TIME.
THE COURT: YOU AND I ARE SAYING THE SAME THING THEM.
WHAT I'M SAYING IS IF YOU ARE ABLE TO IDENTIFY THE FACT THAT YOU WANT TO READ SOME ADDITIONAL MATERIAL, THE BETTER TIME TO DO IT IS THEN, IF YOU ARE ABLE TO DO IT, RATHER THAN IT LATER.
I THINK, UNDER THE LAW, YOU ARE ENTITLED TO DO IT.
MR. FURR: I WITHDRAW THE OBJECTION.
THE COURT: THE REASON I TOOK SO MUCH TIME TO DO THAT IS BECAUSE THAT WILL APPLY FOR THE REMAINDER OF THE CASE.
READ THE WORDS "QUESTION" AND "ANSWER" AS YOU READ, SO WE KNOW WHICH IS WHICH.
MR. BROWN: FROM PAGE 26, LINE 10 OF HIS DEPOSITION.
"QUESTION: WHAT WAS YOUR UNDERSTANDING OF THE REASONS WHY LESLIE WAS MAKING THE EFFORT SHE MADE IN ORDER TO GRADUATE FROM HIGH SCHOOL A YEAR
1879
EARLY?
"ANSWER: TO BE ON THEIR OWN -- I'M TALKING ABOUT ALL OF MY CHILDREN NOW, IT INCLUDES HER -- HAD TO FINISH HIGH SCHOOL BEFORE WE WOULD DO

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IT -- MOST ANYTHING FOR THEM.
"QUESTION: SO ARE YOU SAYING THAT YOU BELIEVED AT THE TIME THAT THE PRIMARY REASON WHY LESLIE WAS DOING THIS WAS THAT SHE REALIZED SHE COULDN'T BE VIEWED BY YOU AND THE FAMILY AS BEING ON HER OWN UNTIL SHE FINISHED HIGH SCHOOL, AND SHE WAS ANXIOUS TO BE ON HER OWN AND, THEREFORE, NEEDED TO FINISH HIGH SCHOOL EARLY TO ACCOMPLISH THAT?
"ANSWER: WELL, I'VE NEVER TALKED TO HER ABOUT IT, BUT I CAN -- I TAKE THAT ASSUMPTION.
"QUESTION: AS HER FATHER, WHAT BELIEF OR BELIEFS DID YOU HAVE AS TO WHY LESLIE WANTED TO BE ON HER OWN EARLY?
"ANSWER: PROBABLY TO GET OUT FROM UNDERNEATH HOUSE RULES.
"QUESTION: AND WERE THERE ANY PARTICULAR RULES THAT YOU THINK THAT SHE WAS PARTICULARLY INTERESTED IN GETTING OUT FROM UNDER.
"ANSWER: NOT -- I DON'T THINK ANYTHING THAT WE -- PUT A HARSH RULE ON ANY OF THEM TO CAUSE THEM TO THINK THAT WAY."
Q. LET ME TALK TO YOU ABOUT THIS, SIR, ASK YOU SOME QUESTIONS ABOUT THIS FILM THAT YOU WERE -- THE FILM THAT YOU WERE ASKED ABOUT IN THE NAVY.

1880

MS. MASON: OBJECTION, YOUR HONOR. THERE WAS NO QUESTION ABOUT A FILM IN THE NAVY.
MR. BROWN: HE WAS EXAMINED ABOUT A FILM IN THE NAVY.
THE COURT: THIS WAS ACTUALLY A FILM AT A COLLEGE.
MR. BROWN: THAT'S THE NEXT FILM.
THE FIRST FILM WAS IN THE NAVY, DURING WORLD WAR II.
THE COURT: OH. DURING HIS YEARS '41 TO '46 OR SOMETHING LIKE THAT.
MR. BROWN: THAT'S RIGHT.
THE COURT: THERE WAS SOME --
MS. MASON: THERE WAS NO QUESTION ABOUT A FILM, YOUR HONOR, DURING THOSE TIME PERIODS.
THE COURT: LET ME SUGGEST THIS TO YOU. JUST ASK YOUR QUESTION WITHOUT REFERENCING PRIOR TESTIMONY.
MR. BROWN: ALL RIGHT.
THE COURT: LET'S SEE WHAT HIS TESTIMONY IS.
MR. BROWN: Q. WHEN YOU WERE IN THE NAVY, THEY SHOWED YOU SOME FILM THAT HAD SOMETHING DO TO WITH BLACK LUNG OR SOMETHING; IS THAT CORRECT?
A. THAT SHOWED A PICTURE OF A LUNG.
Q. WAS IT A FILM?
A. YES, IT WAS A FILM.
Q. DID IT HAVE SOUND?
A. NO.
Q. WAS THERE ANY LECTURE ATTACHED TO IT?

1881

A. YES. AND I BELIEVE IT WAS A DOCTOR, OUR DOCTOR.
Q. DID YOU STAY FOR THE LECTURE?
A. NOT ALL OF IT.
Q. DID YOU HEAR ANYTHING IN THE LECTURE ABOUT SMOKING AND HEALTH?
A. NO.
Q. DID YOU EVER HEAR ANYTHING IN THE NAVY ABOUT SMOKING AND HEALTH?
A. NO, SIR.

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Q. OKAY. YOU TESTIFIED ON CROSS-EXAMINATION THAT YOU KNEW -- YOU WERE ASKED SOMETHING TO THE EFFECT: DID YOU KNOW ABOUT PUBLIC HEALTH ANNOUNCEMENTS ON TV DURING, I THINK IT WAS THE '60S, AND YOU SAID YOU KNEW ABOUT IT.

DO YOU RECALL EVER SEEING IT OR HEARING IT ON THE RADIO?

A. NO.

Q. DID YOU EVER TALK TO LESLIE ABOUT IT?

A. NOT THAT I RECALL.

Q. IN THE MEETING WITH MR. AY, DID HE EXPLAIN TO YOU WHAT HIS EXPERIENCE HAD BEEN IN THE ASBESTOS FIELD?

A. WITH MR. WHO?

Q. MR. AY. MR. AY. CHARLES AY.

MR. ROSSE: OBJECTION, YOUR HONOR. HEARSAY. RELEVANCE.

MR. BROWN: WE WENT INTO THIS CONVERSATION AT SOME LENGTH.

THE COURT: WELL, I'M GOING TO ALLOW THIS QUESTION, BUT PROBABLY NOT THE NEXT ONE.

1882

MR. BROWN: I NEED TO KNOW WHAT YOU THINK THE NEXT ONE IS, BECAUSE I'LL AVOID IT.

THE COURT: BECAUSE HIS ANSWER TO THAT QUESTION MIGHT OBVIATE THE NEED OF RULING ON IT.

MS. CHABER: JUDGE CARNAC (PHONETIC).

THE COURT: THE ONLY QUESTION IS NOT WHAT HE SAID TO YOU BUT DID HE DISCUSS THAT SUBJECT WITH YOU.

I'LL ALLOW THAT QUESTION. WHY DON'T YOU RESTATE IT.

THE QUESTION WAS A GENERAL ONE, NOT ANYTHING SPECIFIC THAT HE SAID TO YOU, BUT DID HE DISCUSS THE GENERAL SUBJECT WITH YOU.

AND MR. BROWN WILL TELL YOU NOW WHAT THAT GENERAL SUBJECT IS.

MR. BROWN: Q. OF HIS EXPERIENCE IN WORKING WITH AND AROUND ASBESTOS PRODUCTS?

A. YES, HE DID.

Q. ALL RIGHT. LET ME SEE WHAT THE QUESTIONS WERE THAT WERE ASKED BY MR. ROSSE, IF I CAN FIND THEM.

OKAY. DID YOU AND HE, MR. AY, DISCUSS THE KIND OF PRODUCTS THAT YOU MAY OR MAY NOT HAVE BEEN EXPOSED TO?

A. YES.

Q. ALL RIGHT. AND DID YOU DISCUSS THE KINDS OF PRODUCTS WHICH MIGHT OR MIGHT NOT HAVE BEEN ASBESTOS PRODUCTS?

A. YES.

Q. AND WHEN HE TOLD YOU ABOUT THE VARIOUS ASBESTOS PRODUCTS, PRODUCTS THAT HAD ASBESTOS, WERE YOU SURPRISED

1883

THEY HAD ASBESTOS?

A. YES, I WAS.

MR. BROWN: THAT'S ALL I HAVE.

THE COURT: OKAY. ANY FURTHER QUESTIONS?

MS. MASON: JUST BRIEFLY, YOUR HONOR.

THE COURT: OKAY.

RECROSS-EXAMINATION

BY MS. MASON: Q. MR. WHITTEKER, I JUST WANT TO MAKE SURE I UNDERSTOOD WHAT YOU JUST SAID.

DID YOU SAY YOU DIDN'T HEAR ANYTHING ABOUT SMOKING AND HEALTH IN THE NAVY? IS THAT WHAT YOU JUST SAID, SIR?

A. REPEAT, PLEASE.

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Q. SIR, I'M JUST TRYING TO MAKE SURE I UNDERSTOOD WHAT YOU JUST TESTIFIED TO.
WAS IT YOUR TESTIMONY THAT YOU DIDN'T HEAR ANYTHING ABOUT SMOKING AND HEALTH IN THE NAVY? IS THAT WHAT YOU JUST SAID, SIR?
A. I THINK I SAID THAT.
Q. SIR, DO YOU REMEMBER GIVING YOUR DEPOSITION IN THIS CASE?
A. YES.
Q. MR. BROWN WAS THERE, WASN'T HE, AT YOUR DEPOSITION?
A. YES, HE WAS.
Q. AND YOU WERE UNDER OATH AT THAT DEPOSITION; ISN'T THAT RIGHT, SIR? YOU SWORE TO TELL THE TRUTH?

1884

A. WELL, I THINK I DID.
Q. AND YOU WERE DOING YOUR BEST TO GIVE HONEST AND TRUTHFUL ANSWERS THAT DAY, WEREN'T YOU, SIR?
A. TO THE BEST OF MY ABILITY.
Q. AND SIR, DIDN'T YOU TELL US IN YOUR DEPOSITION THAT YOU HEARD IN THE SERVICE THAT CIGARETTE SMOKING WAS BELIEVED TO BE ASSOCIATED WITH CAUSING NOT ONLY LUNG DAMAGE BUT ACTUAL LONG-TERM DISEASE THAT COULD LEAD TO DEATH, LIKE CANCER? THAT'S WHAT YOU TOLD US AT YOUR DEPOSITION, ISN'T IT, SIR?
A. WELL, I'LL TAKE YOUR WORD FOR IT. I DON'T REALLY RECALL SAYING THAT.
Q. SIR, DO YOU HAVE YOUR DEPOSITION UP THERE?
A. YES.
Q. ALL RIGHT. WILL YOU TURN WITH ME, PLEASE, TO PAGE 50.
I PROPOSE TO START READING AT LINE 12 AND CARRY THROUGH TO 51, PAGE 51, LINE 7.
A. LINE WHAT?
Q. SEVEN, SIR. LINE 7, SIR, ON PAGE 51.
MR. BROWN: MAY I HAVE A SECOND, YOUR HONOR.
THERE WAS AN OBJECTION TO THIS QUESTION. I'M TRYING TO SEE WHAT THE CONTEXT WAS.
MS. MASON: THERE WASN'T AN OBJECTION WHERE I --
MR. BROWN: I HAVE A CONTINUING OBJECTION.
IF YOU LOOK AT LINE 6.
THE COURT: LINE 6?
MR. BROWN: I THINK THAT OBJECTION IS GOOD, YOUR

1885

HONOR, AND IT CARRIES OVER INTO THE QUESTION -- THE FIRST QUESTION SHE WANTS TO READ.
MAYBE IT'S SOMETHING ELSE. SHE COULD START LATER ON.
MS. MASON: YOUR HONOR, I CAN SHORT-CIRCUIT THIS.
WHY DON'T I START ON LINE 25 ON PAGE 50.
MR. BROWN: LET ME TAKE A LOOK. THIS MIGHT BE ALL RIGHT.
THE COURT: DOES "THIS MIGHT BE ALL RIGHT" MEAN THE SAME THING?
MR. BROWN: NO. IT FALLS SHORT OF "OKAY," BUT IT'S CLOSE.
YES. THAT WOULD BE OKAY.
THE COURT: ALL RIGHT.
MS. MASON: Q. MR. WHITTEKER, ARE YOU WITH ME, PAGE 50, LINE 25?
A. 50?
Q. PAGE 50, LINE 25.

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A. ALL RIGHT.
Q. YOU WERE ASKED THIS QUESTION, SIR?
"QUESTION: AND YOU LEARNED THAT SOME THOUGHT THAT SMOKING WAS ASSOCIATED WITH CAUSING NOT ONLY LUNG DAMAGE BUT ACTUAL LONG-TERM DISEASES THAT COULD LEAD TO DEATH, LIKE CANCER; CORRECT?
"ANSWER: YES.
"QUESTION: AND YOU LEARNED THAT BETWEEN '41 AND '45 IN THE SERVICE?

1886

"ANSWER: RIGHT."
SIR, WERE THOSE THE QUESTIONS ASKED OF YOU AND THE ANSWERS YOU GAVE AT YOUR DEPOSITION?
A. I APOLOGIZE. I SAID IT, BUT I SAID I DIDN'T RECALL IT.
MS. MASON: THANK YOU, SIR.
THE COURT: OKAY. ANYTHING FURTHER FOR MR. WHITTEKER BY ANYBODY?
MR. FURR: NO, YOUR HONOR.
MR. ROSSE: NO, YOUR HONOR.
THE COURT: OKAY. YOU MAY STEP DOWN.
(WITNESS EXCUSED)
MR. BROWN: I WILL GO GET THE NEXT WITNESS.
THE COURT: WHO WILL THE NEXT WITNESS BE?
MR. BROWN: DR. FOGEL.
THE CLERK: PLEASE COME FORWARD.
PLEASE STAND RIGHT HERE AND RAISE YOUR RIGHT HAND. THIS WAY, PLEASE

TESTIMONY OF
THOMAS D. FOGEL, M.D.,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFF, HAVING BEEN DULY SWORN, TESTIFIED AS FOLLOWS:
THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: THOMAS D. FOGEL, DAVID.
THE CLERK: PLEASE SPELL YOUR LAST NAME.
THE WITNESS: F-O-G-E-L.
THE CLERK: IS THOMAS T-H-O-M-A-S?
THE WITNESS: YES.

1887

THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

DIRECT EXAMINATION

BY MR. BROWN: Q. DR. FOGEL, YOU ARE A MEDICAL DOCTOR?
A. YES.
Q. AND YOU ARE LICENSED TO PRACTICE IN CALIFORNIA?
A. YES.
Q. AND WHAT IS YOUR SPECIALTY?
A. I'M A RADIATION ONCOLOGIST.
Q. WHAT IS THAT?
A. I SPECIALIZE IN THE MANAGEMENT AND TREATMENT OF CANCER, SPECIFICALLY USING RADIATION THERAPY.
Q. ARE YOU ONE OF A TEAM OF DOCTORS THAT HAVE BEEN TREATING AND ARE CONTINUING TO TREAT LESLIE WHITELEY?
A. YES, I AM.
Q. OKAY. LET ME ASK YOU TO TELL THE COURT AND THE JURY WHAT YOUR MEDICAL EDUCATION AND YOUR MEDICAL TRAINING CONSIST OF.
A. I WENT TO COLLEGE IN UPSTATE YORK AT RENSSALAER POLYTECHNIC INSTITUTE, AND TO MEDICAL SCHOOL IN ALBANY, NEW YORK AT ALBANY MEDICAL COLLEGE. IT WAS A COMBINED ACCELERATED PROGRAM THAT COMBINED BOTH COLLEGE AND MEDICAL SCHOOL.

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I FOLLOWED THAT WITH AN INTERNAL MEDICINE RESIDENCY AT BROWN UNIVERSITY AT MIRIAM HOSPITAL.
AND THEN I DID A RADIATION ONCOLOGY RESIDENCY AT YALE UNIVERSITY AT YALE-NEW HAVEN HOSPITAL.

1888

Q. ARE YOU BOARD-CERTIFIED?
A. YES, I AM.
Q. IN WHAT?
A. IN RADIATION ONCOLOGY AND IN INTERNAL MEDICINE.
Q. HAVE YOU WRITTEN AND PUBLISHED MEDICAL SCIENTIFIC ARTICLES?
A. I HAVE A FEW.
Q. WOULD YOU DESCRIBE WHAT SUBJECTS THEY WERE ON.
A. I WROTE SEVERAL ARTICLES, EITHER REVIEWS OF PARTICULAR DISEASES OR CASE REPORTS.
ONE WAS A GENERAL REVIEW ON A RELATIVELY UNCOMMON CANCER OF THE BILE SYSTEM, THE BILIARY TRACT. ANOTHER ONE WAS A REVIEW OF THE MANAGEMENT OF CANCER OF THE ESOPHAGUS, THE SWALLOWING TUBE.
I DID A FEW REPORTS ON UNUSUAL SITUATIONS. ONE WAS ON WHAT HAPPENS TO PEOPLE WHO SURVIVE THE TREATMENT OF CANCER OF THE ESOPHAGUS WHO THEN GO ON AND DEVELOP SECOND CANCERS.
ANOTHER ONE ON A HUSBAND AND WIFE WHO BOTH HAD HODGKIN'S DISEASE AND IT WAS A REVIEW OF EXPERIENCE AS TO WHETHER THIS WAS A RARE EVENT OR COULD POSSIBLY BE RELATED AS A POSSIBLE CONTAGIOUS DISEASE.
THERE WAS ANOTHER ARTICLE ON THE MANAGEMENT OF A VERY RARE BENIGN TUMOR OF THE VOICE BOX.
Q. OKAY. NOW, HAVE YOU BEEN INVOLVED WITH THE AMERICAN CANCER SOCIETY FOR SOME PERIOD OF TIME?
A. YES, I HAVE.
Q. FOR HOW LONG?

1889

A. APPROXIMATELY 12 YEARS.
Q. HAVE YOU HELD AN OFFICE OR PERHAPS MORE THAN ONE IN THE CALIFORNIA AMERICAN CANCER SOCIETY?
A. YES.
Q. WHAT WAS THAT OFFICE?
A. I'M THE IMMEDIATE PAST PRESIDENT OF THE CALIFORNIA DIVISION OF THE AMERICAN CANCER SOCIETY.
I WAS THE PRESIDENT OF THE DIVISION LAST YEAR.
Q. 1999?
A. 1988 THROUGH 1999 WERE THE YEARS I WAS PRESIDENT.
Q. ALL RIGHT.
WHAT ELSE HAS YOUR INVOLVEMENT BEEN WITH RESPECT TO THE AMERICAN CANCER SOCIETY IN ADDITION TO HOLDING THAT OFFICE?
A. I'VE BEEN A VOLUNTEER AT ALL LEVELS OF THE ORGANIZATION.
I STARTED OUT IN THE LOCAL WHAT'S KNOWN AS UNIT, WHICH WAS IN VENTURA, CALIFORNIA, AS A MEMBER OF THE BOARD OF VOLUNTEERS IN PUBLIC EDUCATION.
I THEN BECAME THE PRESIDENT OF THE UNIT IN VENTURA. I'VE BEEN INVOLVED IN THE TRICOUNTY AREA OF VENTURA, SANTA BARBARA AND SAN LUIS OBISPO COUNTIES.
I HAVE SERVED ON THE BOARD OF DIRECTORS OF THE CALIFORNIA DIVISION FOR THE PAST APPROXIMATELY 10 YEARS. I HAVE BEEN THE CHAIR OF SEVERAL COMMITTEES AT THE STATE LEVEL.
I'M ALSO ON WHAT'S KNOWN AS THE NATIONAL ASSEMBLY, WHICH IS THE LOWER BODY OF OVERSIGHT AT THE

1890

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NATIONAL LEVEL. THERE'S ALSO A NATIONAL BOARD OF DIRECTORS.

AND I SERVE ON SOME OF THE NATIONAL -- ON TWO OF THE NATIONAL COMMITTEES AS WELL.

Q. IN THE PROCESS -- FIRST OF ALL, LET ME ASK YOU THIS: DOES THE AMERICAN CANCER SOCIETY HAVE, AS ONE OF ITS MISSIONS, THE EDUCATION OF THE PUBLIC IN THE RISKS OF SMOKING?

A. YES, IT DOES.

Q. AND WHAT HAS BEEN YOUR INVOLVEMENT IN THAT SPECIFICALLY?

A. A LOT OF WHAT I DO INVOLVES PUBLIC EDUCATION. AND THE INTENT OF THE AMERICAN CANCER SOCIETY IS TO PREVENT CANCER PRIMARILY, AND THEN TO DEAL WITH THE CONSEQUENCES OF CANCER IN THE PUBLIC, FOR THOSE WHO HAVE TO DEAL WITH THE DISEASE, NOT ONLY PATIENTS BUT THEIR FAMILY MEMBERS.

SO A LARGE PART OF WHAT WE DO IS TRY AND PREVENT IT BEFORE IT EVER OCCURS. TOBACCO-INDUCED CANCERS ARE THE NO. 1 PREVENTABLE CAUSE OF CANCER IN THE COUNTRY.

AND SO CONSEQUENTLY, A LARGE PART OF THE EFFORTS OF THE ORGANIZATION AT ALL LEVELS IS DEVOTED TO TOBACCO CONTROL.

Q. ALL RIGHT. AND IN THE PROCESS OR IN THE INVOLVEMENT THAT YOU'VE HAD THERE, HAVE YOU BECOME FAMILIAR WITH VARIOUS STUDIES, INCLUDING STUDIES BY STATE DEPARTMENTS OF HEALTH, AS TO THE AWARENESS OF THE PUBLIC REGARDING THE RISK OF CANCER FROM SMOKING?

MS. MASON: OBJECTION, YOUR HONOR. THIS IS

1891

BEYOND THE SCOPE OF THIS WITNESS' DISCLOSURE.

THE COURT: OKAY.

MR. BROWN: I'M ONLY GOING TO MENTION IT HERE. I'M JUST GOING TO MENTION IT. I'LL COME BACK TO IT AND I CAN POINT OUT WHY THAT'S NOT A WELL TAKEN OBJECTION LATER.

THE COURT: WHY DON'T YOU GO ON TO ANOTHER SUBJECT RIGHT NOW AND DON'T ASK ANYTHING ABOUT IT. AND WE'LL SEE IF WE CAN GET A CHANCE TO LOOK AT IT AT OUR CONVENIENCE.

I WILL NOT BE ABLE TO SPEND ANY TIME WITH YOU OVER THE NOON HOUR. I HAVE ANOTHER COMMITMENT.

WE'LL HAVE TO FIND SOME TIME ON OUR OWN TO DO IT. OKAY.

MR. BROWN: Q. LET'S GO RIGHT TO YOUR PRACTICE.

WHERE DO YOU PRACTICE?

A. I PRACTICE IN VENTURA, CALIFORNIA.

Q. AND WHAT IS THE NATURE OF THAT PRACTICE?

A. IT IS A RADIATION ONCOLOGY PRACTICE, WHAT'S KNOWN AS A FREE-STANDING RADIATION CENTER, WHERE WE TREAT PATIENTS WITH -- PREDOMINANTLY WITH CANCER.

Q. ARE YOU PART OF A GROUP OF DOCTORS WHO DO THE SAME THING?

A. I AM. OUR CENTER, WHICH IS KNOWN AS CABRILLO RADIATION ONCOLOGY CENTER, IS ONE OF NINE RADIATION ONCOLOGY CANCER CENTERS IN A GROUP KNOWN AS COASTAL RADIATION ONCOLOGY.

THERE ARE THREE PHYSICIANS IN THE OFFICE I WORK

1892

IN, MYSELF AND TWO OTHERS. THERE ARE 13 PHYSICIANS IN OUR GROUP.

Q. AND IS IT IN THE VENTURA OFFICE THAT YOU HAVE SEEN AND TREATED LESLIE WHITELEY?

A. YES.

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Q. AND WHICH HOSPITALS ARE YOU ASSOCIATED WITH IN THAT VENTURA AREA?
A. I'M ON THE STAFF OF THREE HOSPITALS IN VENTURA COUNTY COMMUNITY, MEMORIAL HOSPITAL OF SAN BUENAVENTURA, VENTURA COUNTY MEDICAL CENTER, AND SANTA PAULA MEMORIAL HOSPITAL.
Q. IF YOU COULD -- IF YOU WOULD, I SHOULD SAY -- WOULD YOU GIVE US SORT OF A TYPICAL DAY IN YOUR PRACTICE, WHAT IT IS YOU ACTUALLY DO.
A. I DO SEVERAL THINGS DURING THE DAY. I SPEND MOST OF MY TIME SEEING PATIENTS. I WILL SEE ANYWHERE BETWEEN ONE AND THREE NEW PATIENTS ON A TYPICAL DAY.
THAT INVOLVES SPENDING ABOUT AN HOUR TO AN HOUR AND A HALF IN CONSULTATION, AS WELL AS REVIEWING RECORDS AND FILES AND X-RAYS, OR WHATEVER OTHER MATERIALS IS APPROPRIATE FOR THAT PARTICULAR PATIENT.
IN ADDITION TO THAT, I WILL SPEND A PORTION OF THE DAY SEEING RETURNING PATIENTS FOR CHECKUPS OR TO EVALUATE NEW PROBLEMS THAT MAY DEVELOP. I MAY SEE ANYWHERE FROM FOUR TO 10 SUCH PATIENTS A DAY.
IN ADDITION TO THAT, THERE ARE AT ANY ONE TIME BETWEEN 40 AND 50 PATIENTS UNDERGOING DAILY TREATMENT WITH RADIATION FOR THEIR CANCER.

1893

I MAY END UP SEEING A FEW OF THOSE FOR A PROBLEM THAT THEY MAY HAVE OR A QUESTION THEY MAY HAVE.
ONCE A WEEK, EVERY ONE OF THOSE PATIENTS IS SEEN BY A PHYSICIAN TO ENSURE THAT THERE AREN'T ANY PROBLEMS GOING ON IN THEIR TREATMENT, NEW DEVELOPMENTS, MAKE SURE THAT THEIR QUESTIONS ARE ANSWERED.
AND THEN THERE ARE NONPATIENT INTERACTIONS, KIND OF BEHIND-THE-SCENES STUFF, INCLUDING REVIEWING THE PLANNING PROCESS FOR THEIR TREATMENT.
IF THIS IS A VERY TECHNICALLY INTENSIVE TREATMENT THAT REQUIRES INTERACTION WITH PHYSICISTS AND SPECIALIZED MEMBERS OF OUR TEAM WHO DO CALCULATIONS AND COMPUTER WORK IN ORDER TO DESIGN THE TREATMENT, THAT'S ALL SUPERVISED BY ME. I HAVE TO REVIEW AND APPROVE THOSE.
THEN THERE'S THE USUAL RECORD-KEEPING, CHART DICTATIONS, AND A LITTLE BIT OF BUSINESS THROWN IN THERE AS WELL, IN TERMS OF THE SUPERVISION OF STAFF AND THE LIKE.
Q. OKAY. YOU TREAT -- YOU HAVE TREATED PATIENTS OTHER THAN LESLIE WHITELEY FOR LUNG CANCER?
A. YES, I HAVE.
Q. GIVE US AN IDEA OF HOW OFTEN.
A. I WOULD -- THIS IS A ROUGH ESTIMATE. IT'S NOT -- I DON'T HAVE NUMBERS IN FRONT OF ME.
BUT AT ANY POINT, OUT OF THE 40, 50 PATIENTS, APPROXIMATELY ONE-QUARTER OF THEM ARE UNDERGOING TREATMENT FOR LUNG CANCER.
SO THAT WOULD SUGGEST, IN THE COURSE OF A YEAR, THERE WOULD BE ROUGHLY IN THE RANGE OF ABOUT 100 PATIENTS

1894

WHO ARE TREATED FOR LUNG CANCER.
Q. OVER WHAT PERIOD OF TIME?
A. IN THE COURSE OF A YEAR.
Q. OKAY. HOW LONG HAVE YOU BEEN IN PRACTICE WITH THAT BEING THE NUMBER OF LUNG CANCER PATIENTS THAT YOU TREAT?
A. I HAVE BEEN IN VENTURA SINCE 1985. SO ALMOST 15 YEARS.
Q. AND ABOUT 100 YEAR A YEAR IN EVERY ONE OF THOSE YEARS?

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A. APPROXIMATELY.
Q. DO YOU SEE OR HAVE YOU SEEN, IN YOUR PRACTICE, WOMEN WITH LUNG CANCER UNDER THE AGE OF 40?
A. I'VE SEEN A FEW. I CAN'T GIVE YOU AN EXACT NUMBER.
Q. OKAY. IN YOUR OPINION, IS THE AGE OF A WOMAN BEING 38 AS OPPOSED TO BEING 40 OR 45 SIGNIFICANT IN DETERMINING WHAT THE CAUSE OF HER LUNG CANCER IS?
MS. MASON: OBJECTION, YOUR HONOR. LACK OF FOUNDATION.
THE COURT: I'M GOING TO HAVE TO TALK TO YOU FOR A MINUTE. I'M NOT SURE I UNDERSTAND THAT OBJECTION.
WHY DON'T YOU JUST COME UP HERE AND EXPLAIN IT TO ME.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: ALL RIGHT. THE OBJECTION BEING LACK OF FOUNDATION, I'LL SUSTAIN IT, WITHOUT PREJUDICE TO YOUR

1895

ATTEMPTING TO LAY A FOUNDATION.
MR. BROWN: ALL RIGHT.
Q. DOCTOR, CAN YOU TELL US WHETHER, IN YOUR MEDICAL TRAINING AND YOUR EXPERIENCE, THAT YOU HAVE BEEN INVOLVED IN BECOMING FAMILIAR WITH THE CAUSATION OF LUNG CANCER, ALL OF THE VARIOUS CAUSATIONS OF LUNG, INCLUDING TOBACCO FIRST, WITH JUST YOUR MEDICAL EDUCATION AND YOUR EXPERIENCE?
A. THIS IS SOMETHING THAT'S PART OF A CURRICULUM IN MEDICAL SCHOOL. AND I CAN'T RECALL SPECIFICALLY WHERE THIS WOULD HAVE BEEN ADDRESSED, BUT IT'S ADDRESSED IN MULTIPLE LEVELS AND IN MULTIPLE AREAS.
ULTIMATELY, IT'S SOMETHING THAT ONE FAMILIARIZES ONESELF WITH AS PART OF THE LEARNING PROCESS IN MEDICAL SCHOOL, FIRST IN CLASSROOM SETTINGS, IN THE PHYSIOLOGY CLASSES, AND IN CLASSES ON WHAT IS KNOWN AS PATHOPHYSIOLOGY, WHICH IS THE DEVELOPMENT OF DISEASES.
THERE ARE ALSO LECTURES THAT CENTER ON INTERNAL MEDICINE, AND THEN SPECIFICALLY ON CANCER.
AND THEN AS YOU GO THROUGH THE EDUCATION PROCESS, YOU BEGIN TO SEE PATIENTS IN THE SECOND HALF OF MEDICAL SCHOOL. AND AT THAT TIME, ONE OF THE REQUIREMENTS IS TO KEEP ABREAST OF READING THE TEXTBOOKS, AND THEN THE MEDICAL LITERATURE, SO THAT YOU BEGIN TO UNDERSTAND THE PROCESS OF THE DISEASE, NOT ONLY HOW TO DIAGNOSE IT AND TREAT IT, BUT ALSO WHAT CAUSED IT, IF IT'S KNOWN, AND THEN, ULTIMATELY, HOW TO PREVENT IT. AS ONE --
Q. ALL RIGHT. NOW -- I'M SORRY. I DIDN'T WANT TO CUT YOU OFF.

1896

A. AS ONE GETS BEYOND MEDICAL SCHOOL AND INTO THE INTERNSHIP AND RESIDENCY PHASE, IT'S CONTINUING TO KEEP ABREAST OF THE MEDICAL LITERATURE, READING THE TEXTBOOKS, AND UNDERSTANDING THE PROCESS THAT AFFECTS THE WELL-BEING OR THE HEALTH OF THE PATIENTS THAT YOU'RE SEEING ALONG THE WAY.
AS ONE SPECIALIZES, AND IN MY CASE, I DECIDED TO GO INTO TAKING CARE OF PEOPLE WITH CANCER, I BEGAN TO FOCUS MY READING ON CANCER-RELATED SCIENCE AND PATIENT CARE.
AT THE SAME TIME, I BEGAN TO HAVE SOME INTEREST IN THE VOLUNTEER SIDE OF TAKING CARE OF PEOPLE, AND HENCE, ONCE I WENT INTO PRACTICE, I BEGAN TO VOLUNTEER WITH THE AMERICAN CANCER SOCIETY.
AND SO AT THE SAME TIME AS I CONTINUED TO STAY ABREAST OF MANAGING THE CARE OF PEOPLE WITH LUNG CANCER, I

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ALSO BECAME MORE AWARE OF THE PUBLIC HEALTH SIDE, AND EFFORTS TO PREVENT SMOKING AND ITS RELATIONSHIP TO CANCER.

Q. AND THROUGH ALL OF THAT THAT YOU JUST TOLD US, HAVE YOU STAYED CURRENT IN MEDICAL AND SCIENTIFIC LITERATURE RESPECTING THE CAUSATION OF LUNG CANCER?

A. I'VE ATTEMPTED TO STAY SOMEWHAT CURRENT, BUT I DON'T CONSIDER MYSELF TO BE SOMEONE WHO IS ON THE CUTTING EDGE OF THE SCIENCE.

Q. ALL RIGHT.

A. IT'S SIMPLY IMPOSSIBLE TO BE AT THE STATE OF THE ART IN EVERYTHING.

Q. ALL RIGHT. ARE YOU FAMILIAR WITH STUDIES, FOR EXAMPLE, AMERICAN CANCER SOCIETY STUDIES OR THE SEER STUDY

1897

AND OTHER STUDIES THAT DEAL WITH A PLACEMENT IN OVERALL SPECTRUM OF WHAT AGES WOMEN OR WOMEN AND MEN TEND TO DEVELOP CANCER?

A. THERE ARE SEVERAL STUDIES THAT HAVE LOOKED AT THE DEVELOPMENT OF CANCER, AND MORE SPECIFICALLY, LUNG CANCER AND ITS RELATION TO SMOKING.

THE AMERICAN CANCER SOCIETY HAS HAD A LONG-STANDING INTEREST IN LOOKING AT LARGE GROUPS OF PEOPLE, HUNDREDS OF THOUSANDS, 100,000 PEOPLE IN FACT, AND FOLLOWS THEM OVER TIME. AND THAT'S PROVIDED INFORMATION AND DATA ON RISK FACTORS THAT MIGHT BE IMPLICATED AS CAUSES OF VARIOUS KIND OF CANCERS.

IN ADDITION, THE NATIONAL CANCER INSTITUTE HAS HAD LONG-STANDING WHAT ARE CALLED SURVEILLANCE STUDIES OF POPULATIONS THAT HAVE LOOKED AT THE NUMBERS OF PEOPLE WHO DEVELOP VARIOUS FORMS OF CANCER. THOSE ARE CALLED THE SEER STUDIES. IT STANDS FOR SOMETHING LIKE SURVEILLANCE EPIDEMIOLOGY AND END RESULT.

AND IN FACT, THE SAN FRANCISCO BAY AREA IS ONE OF THE CENTERS OF STUDY.

IN ADDITION TO THAT, THERE ARE -- THROUGH THE DEPARTMENT OF HEALTH SERVICES IN VARIOUS STATES, AND SUPPORTED BY GROUPS LIKE THE CANCER SOCIETY, THERE ARE WHAT ARE KNOWN AS TUMOR REGISTERS, WHERE EVERY CASE OF CANCER THAT IS DIAGNOSED, FOR INSTANCE, IN CALIFORNIA, THAT INFORMATION IS FED TO CENTRAL COMPUTER DATA BANKS, AND THEN ULTIMATELY TO THE DEPARTMENT OF HEALTH, IN COOPERATION WITH ORGANIZATIONS LIKE THE AMERICAN CANCER SOCIETY.

1898

THAT DATA IS USED TO LOOK AT POPULATIONS AND COMPARE THEIR RISK FACTORS WITH THEIR OUTCOMES AND WITH WHAT KINDS OF CANCERS THEY DEVELOP.

Q. I'M NOT SURE IF I ASKED YOU ABOUT THIS.

HOW MANY FEMALE LUNG CANCERS DO YOU SEE A YEAR THAT ARE UNDER THE AGE OF 40?

A. I WOULD SAY I ONLY SEE ONE OR TWO A YEAR.

Q. ALL RIGHT. IS IT UNUSUAL?

A. IT IS.

Q. ALL RIGHT. NOW, BASED ON THE INFORMATION THAT YOU HAVE GIVEN US AND WHAT YOU HAVE TOLD US YOUR EXPERIENCE IS, WHAT IS THE RANGE OF AGES THAT PATIENTS WILL DEVELOP LUNG CANCER, THE OUTER EDGE ON THE BOTTOM, AND THE OUTER EDGE ON TOP, IF THERE IS ONE?

A. I HAVE SEEN PATIENTS AS OLD AS IN THEIR 80S. I HAVE SEEN PEOPLE AS YOUNG AS IN THEIR 20S WITH LUNG CANCER.

Q. ALL RIGHT.

A. BASED ON -- THAT'S BASED ON MY EXPERIENCE.

IF ONE LOOKS AT LARGE POPULATIONS, AGAIN, IF YOU LOOK AT DATA FROM THE NATIONAL CANCER INSTITUTE, THE SEER --

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THE SO-CALLED SEER DATA, YOU SEE THAT THERE ARE RANGES OF AGES. AND THE MOST COMMON ONES OCCUR IN THE 60S, AND THEN IT'S LESS COMMON AS ONE GETS INTO THE VERY HIGH AGE RANGES, AND ITS LESS COMMON AS ONE GETS INTO THE LOW AGE RANGES.

AND IT'S KIND OF A SKEWED, WHAT WE CALL A BELL CURVE, IF YOU REMEMBER THE KINDS OF THINGS THAT ARE USED IN AVERAGES AND THINGS LIKE THAT.

Q. AND LESLIE WHITELEY IS ON THE LOW EDGE OF THE

1899

YOUNG AGE OF THAT BELL CURVE?

A. SHE IS ON THE LOWER END OF THE BELL CURVE, BUT NOT ITS LOWEST END.

Q. IN YOUR OPINION, IN TRYING TO DETERMINE THE CAUSATION OF A LUNG CANCER, IS AN AGE OF 38 OF ANY SIGNIFICANT IMPORT?

A. AS AN INDIVIDUAL ISSUE, IT'S A POSSIBILITY THAT IT COULD BE, BUT IT'S A FACTOR THAT IS NOT LOOKED AT FIRST.

WHAT'S LOOKED AT FIRST IS THE KNOWN RISK FACTORS, LIKE SMOKING. AND NOT JUST A YES-OR-NO SMOKING, BUT HOW MUCH HAS THAT INDIVIDUAL SMOKED AND HOW LONG HAS THAT INDIVIDUAL SMOKED.

AND THERE IS A DESIGNATION COMMONLY USED IN MEDICINE CALLED THE PACK YEAR. THAT'S CORRELATED VERY WELL WITH THE LIKELIHOOD OF RISK FOR LUNG CANCER.

Q. THE WORDS "RISK FACTOR" IS USED FROM TIME TO TIME AND HAS BEEN IN THIS COURT.

DO YOU HAVE TO UNDERSTAND RISK FACTORS TO DEFINE THEM IN TERMS OF LUNG CANCER?

A. THOSE RISK FACTORS ARE THOSE EITHER BEHAVIORS OR EXPOSURES THAT, WHEN PRESENT, INCREASE THE POSSIBILITY OF SOMETHING DEVELOPING -- IN THIS CASE, DEVELOPING.

Q. DO RISK FACTORS RANGE FROM BARELY POSSIBLE TO OVERWHELMINGLY PROBABLE?

A. THERE ARE TWO APPROACHES TO THAT. THERE ARE RISK FACTORS THAT ARE ESTABLISHED. AND IN AN ESTABLISHED RISK FACTORS, LIKE TOBACCO AND SMOKING, THERE ARE DEGREES OF RISK DEPENDING ON EXPOSURE.

1900

SOMEONE WHO HAS SMOKED VERY LITTLE, FOR A VERY SHORT PERIOD OF TIME, MAY HAVE A SLIGHT INCREASED RISK. SOMEONE WHO HAS SMOKED A LOT OVER A LONGER PERIOD OF TIME WILL HAVE A PROPORTIONATELY HIGHER RISK.

THERE ARE ALSO POTENTIAL RISK FACTORS THAT ARE POSSIBLE AS CONTRIBUTING FACTORS OR AS CAUSATION.

AND THE ANSWER TO THE QUESTION MAY NOT BE THOROUGHLY KNOWN, BECAUSE THE SCIENCE HAS NOT BEEN PROVEN, OR IT MAY BE VERY DIFFICULT TO PROVE IT IF THE AMOUNT OF EXPOSURE IS SMALL.

Q. OKAY. WHAT ARE THE RISK FACTORS -- REGARDLESS OF HOW SLIGHTLY THEY MAY BE A CAUSE OR HOW GREAT THEY MAY BE A CAUSE, WHAT ARE THE RISK FACTORS WITH LESLIE WHITELEY?

A. WELL, CERTAINLY, THE NO. 1 RISK FACTOR IN HER CASE IS HER SMOKING HISTORY.

IN ADDITION TO THAT, IT'S MY UNDERSTANDING THAT THERE IS A QUESTION OF ASBESTOS EXPOSURE IN HER HISTORY. THERE IS ALSO SOME QUESTION ABOUT MARIJUANA USE.

AND THEN, THERE IS -- THOSE ARE THE THREE THAT ARE IN MY MIND FROM MY EXPERIENCE IN TERMS OF TALKING TO HER AND REVIEWING HER RECORD.

Q. WHAT IS YOUR UNDERSTANDING -- WHAT IS THE INFORMATION YOU OBTAINED FROM LESLIE WHITELEY WHEN SHE FIRST PRESENTED TO YOU AS TO WHAT HER SMOKING HISTORY WAS?

A. SHE BOTH TOLD ME, AND I ALSO OBTAINED FROM HER

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RECORDS FROM HER OTHER PHYSICIANS THAT HAD SEEN HER THAT SHE HAD SMOKED BETWEEN A HALF A PACK PER DAY AND A PACK AND A HALF PER DAY FOR A PERIOD OF APPROXIMATELY 25 YEARS, WHICH

1901

ENDS UP BEING AN APPROXIMATE 25-PACK-YEAR HISTORY, THE AVERAGE OF A PACK PER DAY FOR 25 YEARS.

Q. AND WHEN DID SHE START SMOKING?

A. I WAS TOLD, AT ABOUT 13.

Q. ALL RIGHT. NOW, IS THERE AN INCREASED RISK TO A SMOKER WHO STARTS SMOKING AT AN EARLY AGE, LIKE 13?

A. THERE IS SOME EVIDENCE THAT SUGGESTS THAT SMOKING AT AN EARLIER AGE MAY MAKE PEOPLE MORE SUSCEPTIBLE TO DEVELOPING LUNG CANCER.

I HAVE HEARD OF SOME DATA AND READ SOME ABSTRACTS THAT HAVE SUGGESTED THAT YOUNGER PEOPLE ARE MORE VULNERABLE TO THE TYPE OF INJURY THAT ULTIMATELY LEADS TO LUNG CANCER.

Q. IN YOUR OPINION, WHAT WAS THE CAUSE OF LUNG CANCER IN LESLIE WHITELEY, YOUR PATIENT?

A. SMOKING CIGARETTES.

Q. WHAT ABOUT ASBESTOS; DO YOU HAVE AN OPINION ON THAT?

A. NO, I DO NOT.

Q. WHY NOT?

A. I DON'T CONSIDER MYSELF TO HAVE EXPERTISE IN THAT AREA, AND I DID NOT TAKE AN EXTENSIVE HISTORY WITH RESPECT TO HER POTENTIAL ASBESTOS EXPOSURE.

Q. WHEN YOU SAY "A LACK OF EXPERTISE," ARE YOU TALKING ABOUT EXPERTISE IN THE AMOUNT OF EXPOSURE OF ASBESTOS THAT SHE WAS SUBJECTED TO?

A. ASBESTOS IS A VERY COMPLEX AREA. THERE ARE PEOPLE WHO SPECIALIZE IN QUANTIFYING HOW MUCH ASBESTOS AND WHAT KIND OF ASBESTOS AND HOW THAT EXPOSURE OCCURRED AND

1902

OVER WHAT PERIOD OF TIME.

AND I SIMPLY DON'T UNDERSTAND THE SUBTLETIES OF THAT WELL ENOUGH TO EVEN SPECULATE AS TO ITS CONSIDERATION.

Q. WHAT ABOUT MARIJUANA; IN YOUR OPINION, WAS THAT A CAUSE OF THIS LUNG CANCER?

A. IT'S MY UNDERSTANDING THAT SHE DOES HAVE A HISTORY OF SMOKING MARIJUANA. THERE IS EVIDENCE IN THE LITERATURE THAT WOULD SUGGEST THAT MARIJUANA EXPOSURE IS TOXIC TO THE LUNG AND MAY CONTRIBUTE.

BUT I DON'T KNOW ENOUGH AGAIN ABOUT THE SCIENCE OF MARIJUANA AND LUNG INJURY AND ITS POTENTIAL CONTRIBUTION TO LUNG CANCER.

Q. ARE YOU AWARE OF ANY EPIDEMIOLOGIC STUDIES THAT HAVE ASSOCIATED MARIJUANA AS A CAUSE OF LUNG CANCER?

A. I AM NOT.

Q. ALL RIGHT.

THE COURT: LET US KNOW WHEN YOU GET TO A LOGICAL BREAKING PLACE.

MR. BROWN: THIS IS PERFECT RIGHT NOW.

THE COURT: ALL RIGHT. JURORS, LET'S BREAK FOR LUNCH.

PLEASE CONTINUE TO FOLLOW THE ADMONITION OVER THE LUNCH HOUR, AND WE'LL SEE YOU BACK AT 1:30.

(LUNCH RECESS TAKEN AT 11:55 A.M.)

1903

AFTERNOON SESSION 1:50 P.M.

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TUESDAY, FEBRUARY 1, 2000

THE COURT: GOOD AFTERNOON, EVERYBODY.

MR. BROWN.

MR. BROWN: THANK YOU, YOUR HONOR.

DIRECT EXAMINATION (CONTINUED)

BY MR. BROWN: Q. DR. FOGEL, YOU HAVE TESTIFIED ALREADY THAT YOU ARE PART OF A TEAM THAT HAS AND IS STILL TREATING LESLIE WHITELEY.

COULD YOU GIVE US BRIEFLY A DESCRIPTION OF THE REST OF THE TEAM THAT -- THE DOCTORS' NAMES AND WHAT THEIR ROLE WAS AND IS IN THE TREATMENT OF OUR CLIENT.

A. THE THREE PHYSICIANS WHO PRIMARILY TREAT HER AT THE PRESENT TIME ARE MYSELF, DR. ROSEMARY MCINTYRE, WHO IS A MEDICAL ONCOLOGIST, AND DR. ROBERT LUM, WHO IS ANOTHER RADIATION ONCOLOGIST.

IN ADDITION, DR. TOM BRUGMAN IS A LUNG SPECIALIST, AND HE PARTICIPATES IN HER CARE.

AND THEN THERE HAVE BEEN SOME OTHER PHYSICIANS INVOLVED AS WELL, DR. JEFF LEONARD, WHO IS A NEUROLOGIST, WHO WAS INVOLVED IN HER ORIGINAL PRESENTATION AND DIAGNOSIS.

Q. ALL RIGHT. NOW, I'M GOING TO ASK YOU TO DESCRIBE FOR THE COURT AND THE JURY THE WAY THAT SHE PRESENTED TO YOU, AND GIVE US A DESCRIPTION OF WHAT HER CONDITION WAS AT THE TIME THAT -- PERHAPS JUST BEFORE AND AT THE TIME OF HER DIAGNOSIS OF LUNG CANCER. AND THEN AFTER THAT, I'M GOING TO ASK YOU TO EXPLAIN WHAT YOU DID. AND I WANT TO GET INTO THE

1904

DETAILS OF THE TECHNIQUE OF WHAT YOU DID.

BUT LET'S START WITH: HOW DID THE PLAINTIFF PRESENT HERSELF TO HER DOCTORS AT THE TIME THAT SHE WAS DIAGNOSED?

A. SHE PRESENTED TO HER PHYSICIAN, HER LOCAL PHYSICIAN WITH A RATHER UNUSUAL COMBINATION OF SYMPTOMS, WITH WEAKNESS, MUSCLE WEAKNESS, AND SOME DIFFICULTY WITH CONTROL AND GAIT. SHE WAS REFERRED -- "BY GAIT," I MEAN WALKING.

SHE WAS REFERRED TO DR. LEONARD, WHO IS A NEUROLOGIST, WHO PUT HER THROUGH SOME PRELIMINARY TESTS. AND THE POSSIBILITY OF THE DIAGNOSIS KNOWN AS MYESTHENIA GRAVIS WAS RAISED.

Q. AS YOU MIGHT EXPECT, I'M GOING TO ASK YOU WHAT THAT IS AND EXPLAIN THAT FOR US.

A. THERE ARE A NUMBER OF NERVE AND MUSCLE DISEASES THAT CAN AFFECT THE ABILITY OF A PERSON TO COORDINATE THEIR MUSCLE MOVEMENT. AND MYESTHENIA IS ONE OF THESE DISEASES THAT AFFECTS THE CHEMICAL SIGNALS THAT STIMULATE MUSCLES FROM THE NERVES.

THERE ARE CHEMICALS THAT ARE RELEASED BY THE NERVES THAT STIMULATE THE MUSCLES TO FIRE AND TO ACT. AND WHEN THERE IS A PROBLEM WITH THAT CHEMICAL, IT CAN RESULT IN PROBLEMS WITH COORDINATION AND WEAKNESS, AND THAT CAN BE PROGRESSIVE.

THAT OFTENTIMES IS RELATED TO AN IMMUNE ABNORMALITY THAT CONFUSES THE LITTLE CHEMICALS THAT THE NERVE ENDINGS SEND AND CAUSES THEM TO MISFIRE OR BLOCKS

1905

THEIR ABILITY TO FUNCTION NORMALLY.

Q. IS THIS SOMETHING THAT'S FAIRLY COMMON IN LUNG CANCERS?

A. MYESTHENIA GRAVIS IS A SEPARATE DISEASE.

HOWEVER, THERE IS A SYNDROME THAT OCCURS IN CERTAIN CANCERS, AND IT'S NOT COMMON, BUT IT'S MORE COMMON

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IN THE KIND OF LUNG CANCER THAT SHE HAS.
Q. WHICH IS?
A. AND THAT SYNDROME FALLS UNDER SEVERAL LABELS. THE BIG BROAD LABEL IS WHAT ARE CALLED PARANEOPLASTIC SYNDROMES. "NEOPLASTIC" IS CANCER. "PARA" MEANS KIND OF OFF TO THE SIDE OR NEXT TO, OR RELATED TO THE CANCER.
IT'S NOT A DIRECT RESULT OF THE GROWTH OF THE CANCER DAMAGING OR IRRITATING A PARTICULAR PART OF THE BODY AND CREATING A PROBLEM. IT'S A RESULT OF SOME INTERACTION OF THE CANCER, EITHER BY INTERACTING WITH THE -- CONFUSING THE IMMUNE SYSTEM OR PUTTING OUT ITS OWN CHEMICALS. THE CANCER IS CREATING ITS OWN CHEMICALS THAT CREATE NEUROLOGICAL PROBLEMS THAT APPEAR TO BE JUST LIKE MYESTHENIA GRAVIS.
Q. OKAY.
A. THE PROBLEM IS, WHEN YOU TREAT THAT LIKE MYESTHENIA GRAVIS, IT DOESN'T GET BETTER,.
AND WHAT YOU HAVE TO DO IS TREAT IT BY TREATING THE CANCER, AND THEN THERE IS A CHANCE THAT IT MAY GET BETTER.
Q. IT'S THE CANCER ITSELF THAT CREATES THIS CONFUSION IN THE IMMUNE SYSTEM?

1906

A. CORRECT.
Q. OKAY. ALL RIGHT.
A. SHE WAS BEING EVALUATED BY DR. LEONARD, AND AT THAT TIME BEGAN TO EXPERIENCE A BRONCHITIS ILLNESS. AND SHE WAS COUGHING AND SHE HAD A BACTERIAL INFECTION OR WHATEVER.
AND HE DID A CHEST X-RAY. AND AT THAT TIME, LO AND BEHOLD, THERE WAS AN ABNORMALITY ON THE CHEST X-RAY. IN FACT, THERE WAS A LARGE GROWTH IN THE CHEST, IN THE CENTRAL PORTION OF HER CHEST.
AND THE RADIOLOGIST INFORMED DR. LEONARD. AND HE IMMEDIATELY ADMITTED HER TO THE HOSPITAL FOR FURTHER EVALUATION, AND REFERRED HER TO DR. BRUGMAN, A LUNG SPECIALIST.
Q. THIS CHEST X-RAY WAS ABOUT A WEEK BEFORE THE DIAGNOSIS TOOK PLACE?
A. ACCORDING TO MY RECORDS, THE RECORDS THAT I HAVE, IT WAS ONE DAY BEFORE THE DIAGNOSIS, BUT THERE MAY HAVE BEEN ANOTHER X-RAY. I'M NOT AWARE OF THAT.
Q. GO AHEAD.
A. SHE WAS ADMITTED TO THE HOSPITAL. SHE WAS SEEN IN CONSULTATION BY DR. BRUGMAN, WHO LOOKED AT THE X-RAY AND CONFIRMED THERE WAS ABNORMALITY THERE.
AND HE THEN DID A TEST KNOWN AS A BRONCHOSCOPY, WHICH IS A PROCEDURE WHERE THEY ANESTHESIZE THE PATIENT AND THEY TAKE A FLEXIBLE TUBE WITH A CAMERA ON THE END OF IT, LOOK DOWN INTO THE -- THROUGH THE NOSE OR THROUGH THE MOUTH INTO THE LUNGS, AND THEY CAN LOOK IN THE RESPIRATORY TRACT.
IF THERE'S SOMETHING ABNORMAL THERE, THEY CAN

1907

TAKE BIOPSIES. AND THAT'S WHAT WAS DONE.
Q. AT THE TIME SHE WAS ADMITTED TO THE HOSPITAL ON THIS OCCASION YOU'RE TALKING ABOUT, WHAT DO THE RECORDS INDICATE HER CONDITION WAS?
A. SHE WAS FAIRLY ILL AT THAT TIME. SHE HAD COME IN, ACCORDING TO THE NOTES THAT I HAVE IN MY RECORDS HERE, WITH FEVER, ABOUT A FIVE-POUND WEIGHT LOSS, AND FAIRLY SIGNIFICANT WEAKNESS.
Q. OKAY. NOW, TAKE US FROM THERE AND TELL US WHAT WENT ON IN TERMS OF THE COURSE OF THE DISEASE, AND ALSO WHAT WAS DONE TO TREAT IT.

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A. THE BIOPSY SHOWED THAT SHE HAD A TYPE OF LUNG CANCER CALLED SMALL CELL LUNG CANCER.

THERE ARE THREE BROAD, COMMON CATEGORIES OF LUNG CANCER, THIS ONE BEING SMALL CELL, WHICH MAKES UP ABOUT A QUARTER OF THE CASES.

THE MOST COMMON BEING WHAT'S CALLED SQUAMOUS CELL, WHICH MAKES UP ABOUT A HALF OR ABOUT 40 PERCENT.

AND THEN THE THIRD CALLED ADENOCARCINOMA WHICH MAKES UP ABOUT A THIRD.

Q. IS SMALL CELL CARCINOMA COMMON IN SMOKERS?

A. IT'S VERY UNCOMMON IN NONSMOKERS. IT'S VERY COMMON IN SMOKERS.

THIS IS ONE OF THE LUNG CANCER CARCINOMAS, THE ONE THAT IS MOST COMMONLY SEEN WHEN WE SEE A LUNG CANCER IN A NONSMOKER.

Q. OKAY. SO I HAVE TO GET THAT SEPARATE, BECAUSE I MAY HAVE CONFUSED IT.

1908

IT'S NOT COMMON TO SEE SMALL CELL EXCEPT IN SMOKERS?

A. THAT IS CORRECT.

Q. OKAY. SO GO AHEAD.

SO WHAT HAPPENED? SHE'S IN THE HOSPITAL?

A. SHE IS IN THE HOSPITAL. THE DIAGNOSIS WAS MADE, SHE WAS PUT ON OXYGEN. ADDITIONAL TESTS WERE RUN TO FIND OUT EXACTLY WHERE THE CANCER WAS AND IF IT HAD SPREAD ANYWHERE.

A CAT SCAN OR A CT SCAN WAS DONE OF THE CHEST AND ABDOMEN AREA, AND IT SHOWED A FAIRLY LARGE TUMOR IN THE CENTRAL PORTION OF THE CHEST WHERE THE LYMPH NODES ARE, AN AREA CALLED THE MEDIASTINUM. IT DID NOT SHOW ANY EVIDENCE OF SPREAD TO HER LIVER.

SHE ALSO HAD A TEST OF HER BONE MARROW, WHICH IS A VERY COMMON PLACE FOR THIS CANCER TO SPREAD, AND THAT WAS CLEAN.

AND AT A POINT SHORTLY THEREAFTER, SHE ALSO HAD A SCAN OF HER BRAIN, WHICH DID NOT SHOW ANY EVIDENCE OF DISEASE IN THE BRAIN AT THAT TIME.

Q. WAS THIS CANCER PRIMARY TO THE LUNG?

A. THIS WAS A CANCER THAT'S PRIMARY TO THE LUNG. IT IS A CANCER THAT VERY COMMONLY SPREADS OUTSIDE OF THE LUNG. AND IT'S A CANCER IN FACT THAT IS TREATED RIGHT OFF THE BAT AS IF IT HAS SPREAD, BECAUSE IT SO COMMONLY SPREADS, EVEN THOUGH THE TESTS MAY NOT NECESSARILY IDENTIFY WHERE IT HAS GONE YET.

Q. SO WHAT WAS THE DECISION AS TO THE MEDICAL

1909

TREATMENT THAT SHE WAS TO RECEIVE?

A. SHE WAS PLACED ON A TREATMENT APPROACH THAT COMBINED CHEMOTHERAPY INTRAVENOUSLY AND RADIATION TO THE VISIBLE TUMOR IN HER CHEST.

Q. THE LATTER PART IS WHAT YOU DID?

A. CORRECT.

Q. IF YOU WOULD STEP DOWN HERE, PLEASE, AND USING THE PAPER OVER THERE, DRAW FOR US WHAT IT IS THAT YOU DID WITH RESPECT TO YOUR RADIATION.

AS YOU DO THIS, YOU MIGHT EXPLAIN WHAT IT IS THAT YOU HAD TO DO WITH THIS RADIATION AND THE EQUIPMENT -- RIGHT UNDERNEATH, THE TYPE OF EQUIPMENT YOU USED TO DO IT.

A. THERE ARE TWO WAYS TO LOOK AT THE CHEST WHEN YOU'RE DIAGRAMMING IT TO SOMEONE. ONE OF THEM IS AS IF YOU WERE LOOKING AT THE PERSON STRAIGHT ON, LIKE THE TYPICAL CHEST X-RAY.

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I'M NOT A GREAT ARTIST BUT THE LUNGS SIT LIKE THIS IN THE CHEST (PREPARING DRAWING), WITH THE HEART AND THE BLOOD VESSELS OVER HERE.

HER TUMOR ORIGINATED IN THIS AREA, WHICH IS ONE OF SEVERAL REASONS WHY IT'S NOT REMOVED WITH AN OPERATION, BECAUSE IT'S INTIMATELY INTERTWINED WITH HER BLOOD VESSELS AND HER NERVES AND HER HEART AND THE AIR PASSAGES.

SO FROM THE SIMPLEST PERSPECTIVE, WHAT WE WOULD DO IS RADIATION, AIM RADIATION DIRECTLY AT THIS AREA WITH A MARGIN OF SAFETY AROUND IT, BECAUSE THIS, LIKE ALL OTHER CANCERS, WOULD HAVE A TENDENCY TO HAVE LITTLE TENTACLES THAT STRETCH OUT BEYOND WHAT YOU CAN SEE ON AN X-RAY.

1910

NOW, WHEN YOU AIM RADIATION IN THIS FASHION, WE HAVE TO BE CAREFUL NOT TO OVERDO IT, BECAUSE THE NORMAL PARTS OF THE BODY CAN ONLY TOLERATE SO MUCH RADIATION.

AND CONSEQUENTLY, WHAT WE'RE TRYING TO DO IS GIVE ENOUGH RADIATION TO KILL THE CANCER, BUT NOT ENOUGH RADIATION TO PERMANENTLY DAMAGE THE NORMAL TISSUES.

ANOTHER WAY OF LOOKING AT THE CHEST IS THE WAY A CAT SCAN IS LOOKED AT, AND IMAGINE A LOAF OF BREAD SLICED ONE END AT A TIME. CAT SCANS GIVE YOU SLICES OF THE PERSON, ONE SLICE AT TIME.

Q. THE JURY HAS SEEN AN ACTUAL CAT SCAN, SO I THINK THEY HAVE SOME IDEA OF IT.

YOU'RE DRAWING THERE WHAT?

A. SO THIS WOULD BE ONE SLICE THROUGH LESLIE, WITH THE SPINE BACK HERE AND THE RIBS AND THE LUNGS OFF TO THE SIDE, THE HEART IN THE MIDDLE WITH THE BLOOD VESSELS.

HER CANCER, AGAIN, SAT IN THIS AREA OF HER CHEST.

AND SO COMING IN THIS WAY WITH THE RADIATION (INDICATING) IS LIKE COMING IN LIKE THAT.

SO IF WE COME IN FROM THE FRONT AND THE BACK, AND THEN ALSO COME IN FROM THE SIDES, WE CAN ESSENTIALLY CATCH THE CANCER IN THE CROSSFIRE, YET THESE PARTS OFF TO THE SIDE THAT ARE ONLY HIT BY ONE OF THE BEAMS GET LESS RADIATION. WE STAY WITHIN A ZONE OF SAFETY AND TOLERANCE.

Q. AND THAT'S WHAT YOU DID?

A. THAT'S WHAT WE DID.

Q. HOW LONG DID THE CHEMOTHERAPY ON THIS OCCASION

1911

LAST; HOW MANY DAYS?

A. THE CHEMOTHERAPY ACTUALLY GOES ON FOR SEVERAL MONTHS.

Q. OKAY.

A. IT'S DELIVERED ON A REGULAR SCHEDULE.

Q. HOW LONG DID THE RADIATION CONTINUE?

A. THE RADIATION WENT ON FOR APPROXIMATELY -- I'LL TELL YOU EXACTLY -- SIX WEEKS. SHE HAD 29 RADIATION TREATMENTS.

Q. OVER SIX WEEKS?

A. EVERY DAY, MONDAY THROUGH FRIDAY, FOR A PERIOD OF SIX WEEKS, DIRECTED TO HER LUNG.

Q. AND AT THE SAME TIME, SHE WAS GETTING CHEMOTHERAPY?

A. SHE WAS GETTING CHEMOTHERAPY ON A REGULAR SCHEDULE, EVERY FEW WEEKS AT THE SAME TIME.

Q. HOW DID SHE TOLERATE THAT?

A. IT WAS HARD. SHE WAS WORN DOWN BY -- SHE GOT FAIRLY TIRED. SHE HAD MANY OF THE USUAL SIDE EFFECTS. IT SUPPRESSED HER IMMUNE SYSTEM. SHE GOT AN EPISODE OF BRONCHITIS. SHE HAD REQUIRED SOME ANTIBIOTICS AT THAT TIME

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AND GOT BETTER.
SHE HAD SOME IRRITATION IN SWALLOWING, BECAUSE THE ESOPHAGUS SITS RIGHT IN THE MIDDLE OF WHERE THE TUMOR WAS. AND SO, CONSEQUENTLY, IT GOT, IN ESSENCE, A SUNBURN KIND OF REACTION, WHICH AFFECTED HER ABILITY TO SWALLOW.
BUT SHE WAS ABLE TO COMPLETE HER TREATMENT WITHOUT INTERRUPTING IT.

1912

Q. AT THE END OF THE CHEMOTHERAPY AND THE RADIATION, WAS THERE -- OR MAYBE EVEN BEFORE THAT -- WAS THERE THEN SOME TEST MADE OR SOME FILMS MADE TO SEE WHAT HAD RESULTED FROM THE TREATMENT?
A. SHE HAD A CHEST X-RAY. SHE HAD A FEW CHEST X-RAYS DONE DURING THE TREATMENT THAT ACTUALLY SHOWED SHE HAD RESPONDED QUITE WELL TO THE TREATMENT, AND THE TUMOR DECREASED IN SIZE QUITE A BIT.
BY THE END OF THE TREATMENT, IT CONTINUED TO DECREASE IN SIZE. AND THEN WHEN SHE RETURNED ABOUT -- I HAVE TO REFER TO THE RECORD EXACTLY -- ABOUT SIX WEEKS AFTERWARDS, SHE THEN WENT THROUGH SOME NEW TESTING, WHICH SHOWED THAT SHE HAD A VERY GOOD RESPONSE TO THE RADIATION.
AND CHEMOTHERAPY, THERE WERE SOME STILL SOME ABNORMALITIES SEEN ON THE SCANS, BUT IT WAS NOT CLEAR AT THAT POINT WHETHER OR NOT THAT WAS STILL TUMOR OR WHETHER OR NOT THAT WAS SCAR TISSUE OR WHAT.
Q. AT SOME POINT, WAS THERE A SUSPICION THAT THERE HAD BEEN A METASTASIS TO THE BRAIN?
A. LET ME BACKTRACK A LITTLE BIT, BECAUSE THE APPROACH TO TREATING SMALL CELL -- I HAVEN'T COMPLETED THAT PART OF IT.
Q. ALL RIGHT.
A. IN ABOUT 25 PERCENT OF PATIENTS, 25 TO 35 PERCENT OF PATIENTS, THE SMALL CELL CANCER WILL BE LIMITED TO THE LUNG AND THERE WILL NOT BE ANY EVIDENCE OF IT HAVING SPREAD.
ABOUT 50 PERCENT OF THOSE PATIENTS WILL APPEAR TO

1913

HAVE WHAT IS CALLED A COMPLETE RESPONSE TO TREATMENT. IN OTHER WORDS, THEY WILL COMPLETE THEIR COURSE OF TREATMENT. UNDERGO NEW TESTING AND THERE WILL BE NO EVIDENCE OF DISEASE. THOSE PATIENTS ARE -- HAVE THE BEST CHANCE OF BEATING THE CANCER.
NOW, WE ARE TALKING ABOUT 50 PERCENT OF 35 PERCENT. WE ARE NOT TALKING ABOUT A LOT OF PEOPLE.
BUT IF YOU CAN GET TO THAT POINT, WHAT WE DO THEN IS RESTAGE, LOOK AT EVERYWHERE, AGAIN TO MAKE SURE THE CANCER IS GONE. THOSE PATIENTS ARE OFFERED A SPECIFIC ADDITIONAL TREATMENT, BECAUSE SOMEWHERE BETWEEN 40 AND 50 PERCENT OF PATIENTS WITH THIS CANCER WILL HAVE SMALL DEPOSITS OF CANCER CELLS HIDING IN THE BRAIN. BECAUSE THE BRAIN HAS SUCH A RICH BLOOD SUPPLY, THE CANCER WILL VERY EASILY SPREAD TO THE BRAIN.
CHEMOTHERAPY, AS EFFECTIVE AS IT MIGHT BE IN GETTING RID OF EVERYTHING ELSE IN THE BODY, DOES NOT PENETRATE INTO THE BRAIN, BECAUSE THE BRAIN PROTECTS ITSELF.
AND SO, IN THOSE CASES WHERE PEOPLE ARE DOING WELL, WE WILL GIVE A MODEST DOSE OF RADIATION TO THE BRAIN IN AN ATTEMPT TO GET RID OF WHAT MIGHT BE HIDING THERE.
Q. EVEN THOUGH YOU CAN'T SEE IT?
A. EVEN THOUGH YOU CAN'T SEE IT.
THIS IS CALLED A SANCTUARY SITE. THOSE PATIENTS APPEAR TO HAVE AN IMPROVEMENT IN THEIR POTENTIAL CURE RATE.
AND SO WHEN YOU'RE ALL SAID AND DONE WITH THESE

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PATIENTS, IN THE FAVORABLE POPULATION OF PATIENTS, YOU END UP WITH ABOUT A 25 PERCENT FIVE-YEAR SURVIVOR OR CURE RATE.

Q. EXPLAIN THAT. WHAT DOES "25 PERCENT FIVE-YEAR" MEAN?

A. IN OTHER WORDS, IF YOU TAKE FAVORABLE PATIENTS WITH LIMITED DISEASE, PUT THEM THROUGH A COURSE OF TREATMENT, THEN IT ALL GOES AWAY, THEORETICALLY -- AND AGAIN, YOU ARE TALKING ABOUT A FAVORABLE SUBGROUP OF PATIENTS -- ABOUT 25 TO 35 PERCENT OF THOSE PEOPLE WILL BE THEORETICALLY CURED OF THEIR CANCER.

Q. AT THE END OF FIVE YEARS?

A. RIGHT. THIS IS ABOUT, PERHAPS, 10 PERCENT OF THE ENTIRE POPULATION OF PATIENTS WITH SMALL CELL LUNG CANCER.

Q. OKAY. NOW, THEN, LESLIE WHITELEY DID HAVE THE BRAIN RADIATION?

A. WE WENT THROUGH THE WHOLE STAGING PROCESS. AND WHEN WE SCANNED HER BRAIN IN ANTICIPATION OF DOING THIS, WE SAW FOUR VERY SMALL ABNORMALITIES. THEY WERE TOO SMALL TO BIOPSY. AND THEY WERE TOO SMALL TO DETERMINE WHETHER OR NOT THESE WERE JUST NORMAL VARIATIONS IN APPEARANCE OR WHETHER THEY MIGHT BE TINY DEPOSITS OF THE CANCER.

SO THE DECISION WAS MADE TO ASSUME THE WORST, THAT THESE WERE IN FACT CANCEROUS, AND TO TREAT HER ACCORDINGLY. THE RATIONALE FOR THAT WAS THAT IF WE WERE WRONG, WE WERE THEN GIVING HER PROPHYLACTIC TREATMENT OR PREVENTATIVE TREATMENT.

WHAT WE DID NOT WANT TO DO IS ASSUME THAT THEY WERE NOT CANCER AND NOT GIVE ENOUGH RADIATION TO THE BRAIN. BECAUSE WHEN YOU'RE TREATING SOMEBODY JUST AS A PRECAUTIONARY MOVE, WE GIVE LESS RADIATION TO THE BRAIN THAN

WHEN YOU TREAT SOMEONE IF THERE IS CANCER THERE.

SO WE MADE THE ASSUMPTION THAT WE HAD BETTER ERR ON THE SIDE OF BEING A LITTLE MORE AGGRESSIVE THAN NOT DOING ENOUGH AND REGRETTING IT.

SO SHE RECEIVED TREATMENT TO HER ENTIRE BRAIN FOR ABOUT FOUR WEEKS, AND THEN HAD AN ADDITIONAL ONE WEEK OF TREATMENT THAT WAS FOCUSED ON THE AREA SURROUNDING THOSE FOUR SUSPICIOUS AREAS.

Q. WHAT IS THAT TYPE OF RADIATION CALLED, WHOLE BRAIN?

A. THAT'S STANDARD WHOLE BRAIN RADIATION.

Q. ALL RIGHT. TELL US WHAT'S TAKEN PLACE SINCE THEN. TELL US WHERE WE ARE AT THIS POINT IN DATE AND TIME.

A. SHE COMPLETED THAT TREATMENT BACK IN -- EXCUSE ME (EXAMINING) -- MARCH OF 1999. AND APPEARED TO DO FAIRLY WELL.

BUT WHEN I SAW HER LATER THAT YEAR, SHE BEGAN TO COMPLAIN TO ME OF SOME VERY VAGUE HEADACHE BEHIND HER EYE.

AND SO CONSEQUENTLY, IN THE SUMMER, I REPEATED HER MRI. THIS IS FOUR MONTHS AFTER SHE HAD COMPLETED THE RADIATION TO HER BRAIN.

Q. THIS WAS LAST YEAR, THE SUMMER OF 1999?

A. YES. IN JULY, SHE HAD AN MRI AT THAT POINT, AND IT SHOWED AN ABNORMALITY THAT MEASURED ABOUT A HALF AN INCH IN SIZE THAT WAS CLOSE TO ONE OF THESE SUSPICIOUS AREAS.

SO IT APPEARED THAT DESPITE THE ATTEMPT AT CONTROLLING THE BRAIN, WE HAD NOT GIVEN ENOUGH RADIATION TO ELIMINATE ALL THE CANCER CELLS AND ONE WAS NOW GROWING.

THIS LESION WAS FAIRLY DEEP IN THE BRAIN AND DID NOT LEND ITSELF TO BEING REMOVED SURGICALLY.

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THERE IS AN ALTERNATIVE TO REMOVING THESE THINGS SURGICALLY, AND IT'S A SPECIALIZED FORM OF RADIATION TREATMENT THAT HAS A LONG NAME CALLED STEREOTACTIC RADIOSURGERY. IT'S A SOPHISTICATED USE OF A MODIFIED RADIATION THERAPY MACHINE THAT IS COMPUTER-CONTROLLED THAT DELIVERS RADIATION WITH VERY, VERY NARROW FOCUSED BEAMS. THEY'RE CALLED PENCIL BEAMS, BECAUSE THEY'RE ABOUT THE SIZE AND THICKNESS OF A PENCIL. AND THEY CAN BE FOCUSED IN FROM MANY DIFFERENT DIRECTIONS.

AGAIN, THE PHILOSOPHY IS CATCHING IT IN THE CROSSFIRE IN THE BRAIN, BECAUSE WE CAN COMPLETELY IMMOBILIZE THE HEAD, WE CAN FOCUS RADIATION IN FROM MANY, MANY DIFFERENT DIRECTIONS, GIVE A SINGLE TREATMENT OF VERY HIGH DOSE TO A VERY, VERY TIGHTLY CONFINED TARGET.

SO I REFERRED HER TO DR. LUM, WHO DOES THIS PARTICULAR FORM OF TREATMENT. YOU NEED SOME SPECIAL EQUIPMENT FOR THAT.

AND SHE UNDERWENT THAT RADIATION TREATMENT IN SEPTEMBER OF 1999.

Q. AND WHAT WAS THE RESULT OF THAT?

A. SHE TOLERATED THE TREATMENT FAIRLY WELL. SHE HAD SOME FATIGUE.

A SUBSEQUENT SCAN, BECAUSE OF SOME ONGOING FATIGUE AND HEADACHE, SHOWED THAT THE AREA WAS NOW SWOLLEN AS A RESULT OF THE TREATMENT, AND THE ABNORMALITY ACTUALLY APPEARS LARGER. IT'S NOT CLEAR IF THAT IS IN RESPONSE TO

1917

BEING DESTROYED BY THE RADIATION, IF THAT'S POTENTIALLY GROWTH OF TUMOR CELLS OR IF THAT'S A TEMPORARY OR PERMANENT PHENOMENON.

SHE HAS BEEN PLACED ON STEROID MEDICATION TO REDUCE THE SWELLING AND TO PROMOTE SOME HEALING, AND IS ABOUT TO UNDERGO SOME NEW TESTING.

Q. ON THE BRAIN?

A. YES. ACTUALLY, SHE IS GOING TO HAVE EVERYTHING LOOKED AT AGAIN.

Q. NOW, HAVE THERE BEEN PERIODIC CHEST X-RAYS?

A. THERE HAVE BEEN.

Q. CT'S?

A. YES.

Q. IS THERE ANY CANCER DETECTABLE IN THE CHEST AS OF THE LAST TIME THOSE TESTS WERE DONE OR THOSE FILMS WERE MADE?

A. NO. SHE HAS HAD NO EVIDENCE OF CANCER REGROWTHS IN THE CHEST AREA; NO EVIDENCE OF SPREAD OUTSIDE THE BRAIN.

Q. DOES THAT MEAN THAT, WITHIN THE LUNG, THERE IS NO CANCER?

A. NOT NECESSARILY. SMALL CELL CANCER OF THE LUNG CAN APPEAR TO BE CONTROLLED EVEN UP TO TWO, THREE YEARS, AND THEN SUDDENLY SPRING UP AGAIN.

IN FACT, IF SOMEONE GOES FIVE YEARS WITHOUT ANY EVIDENCE OF INCREASED ACTIVITY OR NEW ACTIVITY, THAT PERSON MAY BE CURED.

BUT WE HAVE SEEN PATIENTS WHO WILL APPEAR FINE FOR A COUPLE OF YEARS AND THEN IT STARTS TO GROW AGAIN.

1918

THE MOST COMMON SITE FOR IT TO COME BACK IS IN THE CHEST, AND THAT CAN OCCUR IN 50 PERCENT OF PATIENTS AT LEAST, EVEN IN THE FACE OF WHAT APPEARS TO BE SUCCESSFUL TREATMENT.

Q. WHAT IS YOUR OPINION AS TO THE PROGNOSIS OR THE FUTURE COURSE OF THIS DISEASE THAT LESLIE WHITELEY HAS?

A. EVEN IN THE BEST OF SCENARIOS, WITH A RECURRENCE

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IN THE BRAIN, THE POTENTIAL CURE RATE IS PROBABLY ON THE ORDER OF 10 TO 15 PERCENT.

AND I WOULD -- THAT WOULD -- MY OPINION IS THAT SHE IS NOT LIKELY TO BE CURED, AND THAT SHE WILL PROBABLY DIE OF THIS DISEASE SOMEWHERE IN THE ORDER OF ONE TO THREE YEARS, SOMEWHERE IN THAT ORDER.

Q. IF THAT DISEASE COMES BACK, THAT CANCER COMES BACK IN THE LUNG, WHY CAN'T YOU REPEAT WHAT YOU JUST TOLD US THE FIRST TIME, AND GO BACK AFTER IT WITH CHEMOTHERAPY AND -- LET'S TAKE THAT FIRST.

WHY COULDN'T YOU GO BACK WITH CHEMOTHERAPY?

A. THERE ARE SEVERAL OPTIONS. YOU COULD GO BACK WITH THE SAME CHEMOTHERAPY WHICH HAS BEEN PROVEN TO NOT WORK, BECAUSE IT DIDN'T WORK THE FIRST TIME.

YOU MAY GET A TEMPORARY BENEFIT FROM THAT, BUT IT'S LIKELY TO BE OF SHORTER DURATION THAN THE BENEFIT YOU GOT THE FIRST TIME.

Q. OKAY.

A. THE SECOND OPTION IS TO COME IN WITH NEW CHEMOTHERAPY, AND SOMETIMES THAT CAN WORK VERY WELL, ESPECIALLY IF IT'S AN AGENT THAT IS RECENTLY DISCOVERED AND

1919

WASN'T AVAILABLE THE FIRST TIME.

THAT DOESN'T HAPPEN TO BE THE CASE. NOTHING NEW HAS COME UP IN THE LAST YEAR THAT IS BETTER THAN WHAT SHE WAS TREATED WITH BEFORE.

SO CONSEQUENTLY, WE WOULD END UP USING A DRUG THAT ISN'T AS GOOD AS THE DRUG WE USED THE FIRST TIME. IF IT WERE, WE WOULD HAVE USED IT THE FIRST TIME.

THE THIRD OPTION IS TO USE RADIATION AGAIN, AND THAT WOULD DEPEND ON WHERE THE TUMOR HAD RECURRED. IF IT RECURS IN EXACTLY THE SAME PLACE AS IT HAD BEEN BEFORE, THEN WE ARE REALLY NOT ABLE TO GIVE AS MUCH RADIATION AS IS NECESSARY TO CONTROL IT.

Q. WHY NOT?

A. BECAUSE WE'LL EXCEED THE TOLERANCE OF THE NORMAL TISSUES AROUND IT.

Q. WHY WOULD IT BE HARMFUL TO DO THAT, AND WHAT WOULD HAPPEN? WOULD YOU, IN EFFECT, KILL THE TISSUE AROUND WHERE YOU WERE RADIATING?

A. THERE ARE SEVERAL POSSIBILITIES. BUT BASICALLY, YES.

WHAT HAPPENS IS, THE RADIATION INDUCES DAMAGE TO THE LITTLE BLOOD VESSELS THAT FEED THE NORMAL TISSUES.

IT ALSO CAN KILL THE NORMAL PARTS, LIKE THE LUNG, THE HEART, THE MAJOR BLOOD VESSELS, THE NERVES, THE ARTERIES, THE BRAIN.

Q. WOULDN'T THAT BE AN OPTION, IF THE ALTERNATIVE IS THAT CANCER WOULD EVENTUALLY GROW TO A PLACE WHERE IT WOULD KILL THE PATIENT?

1920

A. AND IT IS AN OPTION. BUT AT THAT POINT, THE TREATMENT IS NO LONGER WHAT WE CALL A CURATIVE INTENT. WE ARE NOT TRYING TO CURE THE PATIENT IN THAT CASE. WE ARE SIMPLY TRYING TO RELIEVE SYMPTOMS, MAYBE RELIEVE PAIN OR BLEEDING, INABILITY TO SWALLOW, COUGH, SOMETHING OF THAT ORDER.

AND THEN THE DISCUSSION WITH THE PATIENT IS -- REALLY CENTERS ON: "WHAT'S LIKELY TO DO YOU THE LEAST HARM; THE CANCER OR THE TREATMENT?"

Q. NOW, ON A YEAR-TO-YEAR BASIS, STARTING WITH THE YEAR WE'RE IN, WHAT ARE THE ODDS OF -- THE PERCENTAGES OF HER SURVIVING THIS DISEASE RIGHT NOW?

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A. I THINK, RIGHT NOW, THE CHANCES OF HER SURVIVING THIS DISEASE IS ABOUT 10 PERCENT.
Q. SO SHE HAS A 90 PERCENT POSSIBILITY THAT SHE WILL NOT SURVIVE IT?
A. I THINK THAT'S A FAIRLY GOOD ESTIMATE.
Q. OKAY.
JUST ANOTHER QUESTION THAT HAD SOMETHING TO DO WITH YOUR AMERICAN CANCER SOCIETY RELATIONSHIP.
DO YOU KNOW A DR. DAVID BURNS?
A. YES.
Q. WHAT IS HIS REPUTATION IN THE MEDICAL COMMUNITY?
A. I KNOW DR. BURNS THROUGH MY ASSOCIATION WITH HIM IN THE AMERICAN CANCER SOCIETY AND OUR PUBLIC HEALTH EFFORTS FOR TOBACCO CONTROL.
HE HAS AN OUTSTANDING REPUTATION AS A SPEAKER AND AS AN EDUCATOR, ALSO AS AN ADVOCATE FOR PUBLIC HEALTH.

1921

Q. LET ME ASK YOU THIS QUESTION: IS THERE A REASON TO LOOK AT HISTORY OF CANCER IN A FAMILY WHEN YOU'RE TRYING TO DETERMINE THE CAUSE OF LUNG CANCER?
A. WITH LUNG CANCER, GENERALLY NOT.
THERE ARE NO OUTSTANDING FAMILY ASSOCIATED LUNG CANCERS THAT I KNOW OF.
THERE ARE SOME CANCERS THAT ARE ASSOCIATED WITH FAMILIES, THINGS LIKE BREAST CANCER, COLON CANCER AND PROSTATE CANCER. BUT LUNG CANCER IS NOT ONE OF THOSE.
Q. OKAY. YOU DIDN'T MENTION IT AS A RISK FACTOR BEFORE.
IS THAT WHY?
A. YES.
Q. NOW, IN YOUR MEDICAL RECORDS, I BELIEVE THERE ARE SOME REFERENCES TO MARIJUANA USE; IS THAT CORRECT?
A. YES.
Q. HOW MANY REFERENCES ARE THERE?
A. THERE ARE -- ARE YOU SPEAKING FROM MY NOTES OR FROM ANYONE'S NOTES?
Q. IN YOUR CHART.
A. IN MY CHART? THERE ARE TWO OR THREE REFERENCES BY ME, AND THERE ARE SOME REFERENCES IN SOME OF THE OTHER DOCTOR'S NOTES THAT I HAVE.
Q. CAN YOU FIND THOSE REFERENCES FOR US IN YOUR CHART?
A. YES.
Q. GO AHEAD AND DO THAT.
DO YOU WANT SOMETHING TO MARK IT? I'LL GIVE

1922

YOU --
A. I THINK I HAVE SOME MARKERS HERE.
Q. OH, OKAY. IF YOU NEED MORE, THERE'S A COUPLE.
THE COURT: WHILE THE DOCTOR IS DOING THAT, WHY DON'T WE JUST TAKE THE OPPORTUNITY TO MARK THE DRAWING THAT HE MADE AS THE PLAINTIFFS' NEXT IN ORDER FOR IDENTIFICATION PURPOSES.
MR. BROWN: WHICH IS --
THE COURT: ASSUMING YOU ARE THROUGH ASKING HIM TO DRAW.
ARE YOU?
MR. BROWN: YES. I THINK I AM.
THE COURT: THEN LET'S MARK IT.
THE CLERK: PLAINTIFFS' EXHIBIT 1856.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS'

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EXHIBIT # 1856)

MR. BROWN: 1856 IS DR. FOGEL'S DRAWINGS OF LUNGS AND THE RADIATION TECHNIQUE.

Q. FIRST, I THINK THERE'S ONE HANDWRITTEN, ISN'T THERE, AND THERE'S ONE TYPED ONE, DICTATED?

A. THERE ARE TWO HANDWRITTEN REFERENCES TO MARIJUANA BY ME, AND ONE DICTATED REFERENCE.

Q. LET'S TAKE THE DICTATED FIRST, SINCE THERE'S ONLY ONE.

A. THIS IS MY ORIGINAL CONSULTATION DICTATION FROM THE HOSPITAL CONSULTATION.

1923

Q. WHEN WAS THAT CONSULTATION?

A. THE DATE ON THIS IS JUNE 24TH, 1998.

Q. THAT WAS THE DAY SHE WAS DIAGNOSED?

A. THAT WAS TWO DAYS AFTER HER BRONCHOSCOPY.

Q. WOULD YOU READ YOUR HANDWRITTEN NOTATION THAT RELATES TO MARIJUANA THERE.

A. "SHE ALSO ADMITS TO EXTENSIVE USE OF MARIJUANA FOR AT LEAST 10 YEARS. SHE STOPPED THIS MANY YEARS AGO."

Q. DO YOU KNOW WHAT THE SOURCE OF THAT INFORMATION WAS?

A. I CANNOT RECALL.

Q. IT'S POSSIBLE THAT IT WAS THE PATIENT?

A. IT'S POSSIBLE.

Q. WHAT ARE THE OTHER POSSIBILITIES?

A. I MAY HAVE TAKEN THAT FROM ANOTHER NOTATION IN THE RECORD FROM SOMEONE ELSE, OR IT MAY HAVE BEEN COMMUNICATED TO ME BY ANOTHER PHYSICIAN.

Q. WHAT -- I'M SORRY. I HAVE FORGOTTEN THE WORDS. TELL ME AGAIN, HOW DID YOU DESCRIBE THE USE THERE?

A. "SHE ALSO ADMITS TO EXTENSIVE USE OF MARIJUANA FOR AT LEAST 10 YEARS."

Q. EXTENSIVE. CAN YOU TELL US WHAT "EXTENSIVE" MEANS IN THAT NOTATION?

A. I REALLY CAN'T, BECAUSE I DON'T RECALL WHY I USED THAT TERMINOLOGY.

Q. OKAY. NOW, THAT'S DICTATED?

A. YES.

1924

Q. OKAY. GO TO THE HANDWRITTEN ONE.

A. OKAY.

Q. AND READ THAT FOR US.

A. YES. YES. "SHE HAS A 25-PLUS PACK YEAR SMOKING HISTORY, PLUS 10-PLUS YEARS OF HEAVY MARIJUANA USE IN THE PAST."

Q. CAN YOU TELL US WHERE THAT CAME FROM?

A. AGAIN, I CAN'T RECALL.

Q. WHAT IS THE DATE OF THAT?

A. THAT'S DATED JULY -- JUNE 24TH, 1998.

Q. IS THAT THE DAY YOU WERE FIRST INTERVIEWING HER?

A. YES. THIS IS THE HANDWRITTEN SUMMARY NOTE THAT ACCOMPANIES THE WRITTEN DICTATION, OR THE TYPED DICTATION.

Q. IT WAS MADE THE SAME DAY?

A. YES.

Q. WERE YOU TALKING TO OTHER DOCTORS WHO WERE TREATING HER ON THAT DAY?

A. I HAD SPOKEN TO OTHER DOCTORS, I BELIEVE, THE DAY BEFORE.

Q. ALL RIGHT. AND I DON'T KNOW IF I ASKED THIS OR NOT: DO YOU KNOW THE SOURCE OF THAT INFORMATION?

A. NO.

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Q. IT COULD HAVE BEEN WHAT SHE TOLD YOU, I SUPPOSE?
A. YES.
Q. COULD IT HAVE BEEN WHAT OTHER DOCTORS TOLD YOU?
A. YES.
Q. ARE YOU ABLE TO HELP US OUT AS TO WHAT IT MEANS IN TERMS OF ACTUAL QUANTITATIVE USE?

1925

A. I HAVE NO NOTATION HERE OF ACTUAL QUANTITY.
Q. OKAY. NOW, IN THE MEDICAL COMMUNITY IN VENTURA, IS THERE SOME COMMON USAGE FROM WHICH YOU COULD PROFESSIONALLY GIVE SOME RANGE AS TO WHAT THAT MIGHT MEAN, "EXTENSIVE" OR "HEAVY USE"?
A. THERE'S NO USUAL DESCRIPTIVE ON MARIJUANA USE, NOT LIKE WITH TOBACCO WHERE WE SIGNIFY A PACK AND THE NUMBER OF YEARS OR THE NUMBER OF CIGARETTES.
THERE IS NO UNIT THAT WE HAVE THAT IDENTIFIES IT.
Q. WHAT WOULD -- WHAT WOULD YOU THINK "HEAVY" OR "EXTENSIVE" WOULD MEAN WHEN YOU WROTE IT?
MS. MASON: OBJECTION, YOUR HONOR. SPECULATION.
THE COURT: SUSTAINED.
MR. BROWN: WITHDRAW THE QUESTION.
THE COURT: WHAT?
MR. BROWN: GO AHEAD AND RULE.
THE COURT: IF YOU WITHDRAW IT --
MR. BROWN: NO, I'M NOT GOING TO WITHDRAW IT.
THE COURT: IN LIGHT OF HIS PRIOR ANSWER, I THINK YOU'RE ASKING HIM TO SPECULATE HERE. SO I'M GOING TO SUSTAIN.
YOU WOULD BE SPECULATING TO ANSWER THAT QUESTION?
THE WITNESS: YES.
THE COURT: OKAY. I'LL SUSTAIN.
MR. BROWN: Q. AND THAT WOULD BE TRUE WHETHER I ASKED YOU ABOUT "HEAVY" OR "EXTENSIVE," EITHER ONE OF THOSE WORDS?

1926

A. I WOULD BE GUESSING.
Q. THAT WOULD BE TRUE NO MATTER WHAT RECORD I ASKED YOU TO LOOK AT THAT RELATED TO HER, IN TERMS OF USING ANY DESCRIPTION OF MARIJUANA USE, OTHER THAN AN ABSOLUTE X NUMBER OF TIMES PER WEEK, PER MONTH, PER YEAR, WHATEVER?
A. YES.
Q. OKAY. LET ME ASK THIS. I THINK WE'RE JUST ABOUT DONE HERE NOW. YOU WILL BE HAPPY TO KNOW I'M JUST ABOUT DONE.
IS THE RISK OF LUNG CANCER FROM SMOKING INCREASED IN THOSE WHO START YOUNG, AS SHE DID?
A. THERE IS SOME EVIDENCE --
MS. MASON: OBJECTION, YOUR HONOR. THAT HAS BEEN ASKED AND ANSWERED.
THE COURT: I THOUGHT THIS DOCTOR HAS ALREADY ANSWERED THAT QUESTION.
YOU'VE ALREADY ANSWERED THIS QUESTION, HAVEN'T YOU?
MR. BROWN: THAT'S ENTIRELY POSSIBLE. I DO NOT REMEMBER WHETHER HE DID OR NOT.
THE COURT: WE COVERED THIS THIS MORNING.
MS. CHABER: IT'S ONE OF THOSE SENIOR MOMENTS, YOUR HONOR.
MR. BROWN: A SENIOR MOMENT AS OPPOSED TO A LUCID INTERVAL.
THE COURT: AM I WRONG ABOUT THAT OR DIDN'T YOU ANSWER THIS QUESTION?

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I THINK WE COVERED THIS.

THE WITNESS: I THINK THAT QUESTION MAY HAVE BEEN ANSWERED.

THE COURT: I THINK SO. THAT'S RIGHT.

THAT WAS YOUR OBJECTION. THAT'S YOUR RECOLLECTION?

MS. MASON: YES, YOUR HONOR.

THE COURT: THAT'S MINE ALSO.

MR. BROWN: THREE TO ONE.

Q. ALL RIGHT. LET ME MOVE TO WHAT I WAS GOING TO ASK YOU, THE SECOND ONE. I HOPE I HAVEN'T ASKED THIS BEFORE.

IS THE DURATION OF THE USE OF TOBACCO IMPORTANT IN DETERMINING THE AMOUNT OF RISK FROM SMOKING?

A. YES.

Q. AND THE PACKS PER DAY?

A. YES.

Q. AND THE GENDER?

A. THERE IS EVIDENCE THAT WOMEN MAY BE MORE SUSCEPTIBLE TO LUNG CANCER THAN MEN.

Q. AND ALL OF THOSE PUT TOGETHER IN THIS CASE, WITH LESLIE WHITELEY'S AGE WHEN SHE STARTED, HER DURATION OF SMOKING, HER PACKS PER DAY AND HER GENDER, WHAT IS YOUR OPINION AS TO THE RELATIVE RISK THAT SHE HAD PRIOR TO HER DIAGNOSIS FOR DEVELOPING LUNG CANCER FROM SMOKING CIGARETTES?

A. SHE WAS AT VERY HIGH RISK FOR DEVELOPING LUNG CANCER, LIKE ANYONE ELSE WHO HAS A LONG AND SIGNIFICANT SMOKING HISTORY.

SOMEONE WITH A 25 PACK YEAR SMOKING HISTORY HAS A MUCH HIGHER RISK OF GETTING LUNG CANCER THAN SOMEONE WHO HAS NEVER SMOKED.

THERE IS EVIDENCE, AS I POINTED OUT, THAT SHE MAY BE AT EVEN HIGHER RISK BECAUSE SHE STARTED EARLY, AND BECAUSE SHE IS A FEMALE AS COMPARED TO THE OVERALL POPULATION.

MR. BROWN: ALL RIGHT. THAT'S ALL I HAVE, YOUR HONOR.

THE COURT: OKAY. YES, MS. MASON.

CROSS-EXAMINATION

BY MS. MASON: Q. HELLO, DR. FOGEL.

A. HELLO.

Q. I'M LUCY MASON, AND YOU AND I HAVE NOT MET BEFORE.

DR. FOGEL, YOU SAID YOU SPECIALIZED IN RADIATION ONCOLOGY; IS THAT RIGHT?

A. THAT'S CORRECT.

Q. AND I THINK YOU SAID THAT MEANS YOU TREAT CANCER; IS THAT RIGHT, DOCTOR?

A. YES.

Q. AND YOU DON'T USUALLY -- YOU ARE NOT USUALLY CALLED UPON TO DIAGNOSE CANCER, ARE YOU, SIR?

A. I DO SOME DIAGNOSIS, ESPECIALLY ON PATIENTS WHO I HAVE TREATED FOR ONE CANCER AND MAY ULTIMATELY END UP WITH SOMETHING ELSE.

Q. AS AN INITIAL MATTER, A PATIENT WHO PRESENTS WITH CANCER FOR FIRST TIME, IT'S NOT USUALLY PART OF YOUR TREATMENT TO DIAGNOSE THAT CANCER, IS IT, DOCTOR?

A. THAT'S CORRECT.

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Q. IN FACT, YOU DON'T NEED TO KNOW THE CAUSE OF CANCER TO TREAT IT; ISN'T THAT ALSO TRUE?
A. NO, I DON'T AGREE WITH THAT.
Q. YOU CAN TREAT CANCER WITHOUT KNOWING THE CAUSE OF IT, CAN'T YOU, DOCTOR?
A. I CAN PRESCRIBE A COURSE OF TREATMENT BASED ON OBTAINING AS MUCH KNOWLEDGE AS I CAN IN ORDER TO MAKE THE APPROPRIATE PRESCRIPTION.
BUT IN THE CASE OF MANY CANCERS, THE RISK FACTORS THAT ARE RELATED TO WHAT CAUSES THEIR CANCER CAN ALSO HAVE A BEARING ON HOW THEY TOLERATE THEIR TREATMENT AND WHAT RISKS THEY MAY BE FACING IN THE FUTURE.
Q. AND YOU TAKE A HISTORY FROM A PATIENT AND WRITE THOSE RISK FACTORS DOWN, DON'T YOU, DOCTOR?
A. THE ONES THAT I THINK ARE RELEVANT.
Q. ALL RIGHT. WE'LL GET TO THAT IN JUST A SECOND.
YOU HAVEN'T PUBLISHED ANY PEER-REVIEWED ARTICLES, HAVE YOU, DOCTOR, ON LUNG CANCER AND ITS POSSIBLE CAUSES?
A. NO, I HAVE NOT.
Q. DOCTOR, I THINK YOU HAVE ALREADY TOLD US THAT YOU SEE 100 PATIENTS A YEAR, 100 NEW PATIENTS A YEAR THAT HAVE LUNG CANCER; IS THAT RIGHT?
A. APPROXIMATELY.
Q. AND YOU MOST OFTEN SEE LUNG CANCER IN PATIENTS IN THEIR 60S; ISN'T THAT RIGHT, DOCTOR?

1930

A. THE AVERAGE AGE IS PROBABLY IN THE 60S. THE AVERAGE AGE OF MY PATIENT POPULATION IS THE LATE 60S.
Q. AND YOU ALREADY TOLD US, I THINK, SEEING LUNG CANCER IN A PATIENT UNDER 40 IS UNUSUAL; CORRECT, DOCTOR?
A. IT'S UNCOMMON, CERTAINLY.
Q. AND IN FACT, I THINK YOU SAID YOU SEE MAYBE ONE OR TWO A YEAR; IS THAT RIGHT?
A. THAT'S A GUESS, BECAUSE I DON'T KEEP TRACK OF THAT, AND I DON'T HAVE ACCESS TO THAT INFORMATION RIGHT NOW.
Q. AND OF THE ONE OR TWO PERSONS UNDER 40 YOU SEE A YEAR WITH LUNG CANCER, THAT'S ALL LUNG CANCER CELL TYPES, ISN'T IT, DOCTOR?
A. WITHOUT GOING BACK AND ACTUALLY LOOKING, I WOULD -- I DON'T KNOW.
Q. MRS. WHITELEY HAS SMALL CELL LUNG CANCER; IS THAT RIGHT, SIR?
A. YES.
Q. OKAY. DOCTOR, ARE YOU FAMILIAR WITH THE INCIDENCE OF LUNG CANCER IN PEOPLE UNDER 40?
A. I HAVE SEEN SOME PUBLISHED STATISTICS THAT LOOKS AT THE INCIDENCE BY FIVE-YEAR AGE PERIODS.
Q. AND IN FACT, DOCTOR, YOU MENTIONED THE SEER DATA --
A. YES.
Q. -- EARLIER, WHEN YOU WERE SPEAKING WITH MR. BROWN.
CAN YOU SEE THIS, DOCTOR, ALL RIGHT OR SHOULD I MOVE IT UP (INDICATING)?

1931

A. I CAN SEE IT.
Q. (DRAWING ON BOARD)
DOCTOR, YOU HAVE ACTUALLY REVIEWED THE SEER DATA, HAVE YOU NOT, FOR INCIDENCE OF LUNG CANCER RATES IN WOMEN UNDER 40?
A. YES.
Q. AND YOU TOLD US EARLIER -- LET'S SEE IF I HAVE GOT THAT RIGHT -- SURVEY OF EPIDEMIOLOGICAL END RESULTS; IS

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THAT WHAT "SEER" STANDS FOR?
A. APPROXIMATELY, I THINK SO.
Q. IN FACT, YOU HAVE LOOKED AT THE SEER DATA FOR SMALL CELL LUNG CANCER IN PEOPLE UNDER 40; CORRECT?
A. YES.
Q. ALL RIGHT. AND THE JURY HAS HEARD ABOUT SEER DATA BEFORE, DOCTOR.
BUT JUST TO REMIND THEM, THAT'S THE SURVEILLANCE DATA THAT LOOKS AT INCIDENCE RATES OF DISEASE CATEGORIES IN THE U.S.; IS THAT RIGHT?
A. THAT'S CORRECT.
Q. SO IT LOOKS AT HOW MANY LUNG CANCERS HAPPEN IN A YEAR?
A. PER POPULATION.
Q. PER AGE GROUP?
A. PER AGE GROUP.
Q. LET'S TALK ABOUT THE DIFFERENT AGE GROUPS.
YOU HAVE LOOKED AT THE SEER DATA, CORRECT, AND IS IT NOT TRUE, DOCTOR, THAT THE HIGHEST INCIDENCE OF SMALL CELL LUNG CANCER ARE IN WOMEN OVER THE AGE OF 65?

1932

A. THE RATE GOES UP AS THE AGE GOES UP.
Q. WOULD YOU AGREE WITH ME THAT THE HIGHEST INCIDENCE IS IN WOMEN OVER THE AGE OF 65?
A. WITHOUT HAVING THE DATA IN FRONT OF ME, I AM NOT SURE THAT THAT'S THE AGE CATEGORY. I BELIEVE THAT THAT'S THE CASE, BUT I'M NOT SURE.
Q. DO YOU REMEMBER TELLING US THAT AT YOUR DEPOSITION?
A. I BELIEVE THAT'S WHAT I SAID. I THINK IT WAS OVER THE AGE OF 65, BUT THEY BREAK IT DOWN INTO ADDITIONAL CATEGORIES AS WELL.
Q. THEY DO, BUT WE ARE GOING TO GET TO THOSE CATEGORIES.
A. I BELIEVE THE CATEGORY OVER THE AGE OF 65 WAS COMPARED TO THE CATEGORY UNDER THE AGE OF 65.
Q. ALL RIGHT, DOCTOR.
AND IN FACT, THIS IS CONSISTENT WITH YOUR CLINICAL EXPERIENCE, IS IT NOT, DOCTOR?
A. YES.
Q. AND THE LOWEST INCIDENCE FOUND IN THE SEER DATA, DOCTOR, IS ACTUALLY IN MRS. WHITELEY'S AGE GROUP; ISN'T THAT RIGHT?
A. AGAIN, WITHOUT LOOKING AT THE NUMBERS AGAIN, I CANNOT RECALL IF IT WAS IN THE 35 TO 39 AGE GROUP OR IN THE 30 TO 34 AGE GROUP.
Q. DO YOU REMEMBER TELLING ME AT YOUR DEPOSITION THAT YOU THOUGHT IT WAS IN THE 35 TO 39 YEAR OLD AGE GROUP?
A. I DON'T RECALL.

1933

Q. ALL RIGHT, DOCTOR.
AND THE LOWEST INCIDENCE IS .5 OUT OF 100 IN THAT AGE GROUP, ISN'T IT, SIR, OUT OF 100,000?
A. I BELIEVE THAT THAT WAS APPROXIMATELY THE NUMBER THAT WAS IN THERE.
Q. THAT'S .0005 PERCENT (WRITING ON BOARD), ISN'T IT, DOCTOR?
A. THAT IS ONE CASE OUT OF EVERY 200,000 PEOPLE --
Q. RIGHT.
A. -- PER YEAR IN THAT AGE GROUP.
Q. ONE CASE OF SMALL CELL LUNG CANCER IN THIS YOUNG AGE GROUP FOR 200,000 WOMEN EVERY YEAR; IS THAT CORRECT?
A. YES.

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Q. DOCTOR, YOU DON'T KNOW THE RELATIVE RISK OF LUNG CANCER IN WOMEN UNDER 40, DO YOU?
A. NO, I DO NOT.
Q. IN FACT, YOU DON'T EVEN KNOW IF ONE HAS BEEN CALCULATED, DO YOU?
A. I HAVE NOT SEEN DATA.
Q. AND YOU DON'T KNOW WHETHER IT'S POSSIBLE TO CALCULATE A RELATIVE RISK FOR WOMEN?
A. NOT IN MY AREA OF EXPERTISE.
Q. DOCTOR, YOU MENTIONED EARLIER A CPS STUDY THAT FOLLOWED PEOPLE OVER TIME?
A. YES.
Q. THAT WAS THE CPS-I STUDY AND THE CPS-II STUDY?
A. YES.
Q. THE JURY HEARD ABOUT THE CPS-I STUDY AND THE

1934

CPS-II STUDY EARLIER.
BUT JUST TO REMIND THEM, DOCTOR, THE CPS-I STUDY FOLLOWED A MILLION PEOPLE OVER A CERTAIN PERIOD OF TIME; IS THAT RIGHT?
A. I BELIEVE SO.
Q. AND THE CPS-II STUDY FOLLOWED WITH 1.2 MILLION PEOPLE; IS THAT CORRECT?
A. AGAIN, I BELIEVE SO.
Q. AND I THINK YOU'VE ALREADY MENTIONED, THESE WERE AMERICAN CANCER SOCIETY STUDIES?
A. YES.
Q. AND YOU HAVE BEEN INVOLVED WITH THE AMERICAN CANCER SOCIETY; RIGHT, DOCTOR?
A. I HAVE BEEN INVOLVED. I HAVE NOT BEEN INVOLVED WITH EITHER OF THESE TWO STUDIES, HOWEVER.
Q. BUT YOU HAVE BEEN INVOLVED WITH THE AMERICAN CANCER SOCIETY?
A. YES.
Q. AND, DOCTOR, WHO IS DR. MICHAEL THUN?
A. HE IS THE HEAD OF EPIDEMIOLOGY AND STATISTICS FOR THE AMERICAN CANCER SOCIETY AT THE NATIONAL OFFICE, KEEPS TRACK OF THE STATISTICS OF CANCER INCIDENCE.
Q. AND, DR. FOGEL, WHEN WE ASKED YOU AT YOUR DEPOSITION ABOUT WHAT THE CPS-II STUDY SHOWED ABOUT LUNG CANCER INCIDENCE AND DEATH RATES FOR WOMEN UNDER 40, YOU TOLD US THAT DR. THUN IS THE PERSON YOU'D RELY ON FOR THAT INFORMATION.
DO YOU REMEMBER THAT?

1935

A. YES. IF I WANTED DETAILED INFORMATION ON INTERPRETING THAT DATA, I WOULD CALL DR. THUN.
Q. IN FACT, YOU STATED HE COULD PROVIDE A RELIABLE AND RESPONSIBLE INTERPRETATION OF THAT DATA?
A. I BELIEVE HE WOULD BE THE PERSON THAT I WOULD TURN TO.
Q. ALL RIGHT.
I'M GOING TO HAND YOU A BOOKLET ENTITLED "MONOGRAPH 8."
WHAT IS THE TITLE OF THAT, SIR?
A. "SMOKING AND TOBACCO CONTROL, MONOGRAPH 8, CHANGES IN CIGARETTE-RELATED DISEASE RISKS AND THEIR IMPLICATION FOR PREVENTION AND CONTROL."
Q. ALL RIGHT, DOCTOR.
(ATTORNEYS CONFER)
MS. MASON: Q. DOCTOR, WILL YOU TURN WITH ME, PLEASE, TO THE FRONT OF THAT BOOK TO THE ACKNOWLEDGMENT SECTION, PAGE XV.

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A. OKAY.
Q. HAVE YOU GOT IT?
A. YES.
Q. AND DR. MICHAEL THUN IS THE AUTHOR OF CHAPTER 4, IS HE NOT?
A. HE IS ONE OF THE AUTHORS, YES.
Q. IN FACT, HE'S THE FIRST LISTED AUTHOR, IS HE NOT?
A. YES.
Q. WILL YOU LOOK TO SEE WHO IS THE FIRST LISTED AUTHOR OF CHAPTER 5?

1936

A. DR. THUN.
Q. AND HE IS ALSO A COAUTHOR OF CHAPTER 3, IS HE NOT, DR. FOGEL?
A. YES, HE IS.
Q. CHAPTER FOUR IS ENTITLED: "TRENDS IN TOBACCO SMOKING AND MORTALITY FROM CIGARETTE USE CPS-I AND CPS-II"; IS THAT RIGHT?
A. YES.
Q. AND CHAPTER 5 IS ENTITLED: "AGE AND THE EXPOSURE-RESPONSE RELATIONSHIPS BETWEEN CIGARETTE SMOKING AND PREMATURE DEATH IN CPS-II"; IS THAT RIGHT, DR. FOGEL?
A. YES.
Q. CHAPTER 5 SPECIFICALLY LOOKS AT THE IMPORTANCE OF AGE IN CANCER; CORRECT?
A. I HAVE NOT READ CHAPTER 5. I CAN ONLY RELATE TO THE TITLE.
Q. ONLY WHAT THE TITLE SAYS. WE'LL LOOK AT SOME OF THESE A LITTLE MORE CLOSELY, DOCTOR.
DOCTOR, WILL YOU-- LET'S SEE. WILL YOU TURN TO PAGE 317, CHAPTER 4.
THE CLERK: NEXT IN ORDER?
MS. MASON: NEXT IN ORDER. 4800; IS THAT RIGHT?
THE CLERK: CORRECT.
THE CLERK: DEFENDANTS' EXHIBIT 4800.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION DEFENDANTS'

1937

EXHIBIT # 4800)
MS. MASON: Q. DOCTOR, I HAVE MARKED THAT CHART SEPARATELY.
MR. BROWN: WHAT WERE THE NUMBERS?
THE CLERK: 4800.
MS. MASON: DEFENSE EXHIBIT 4800.
Q. AND DOCTOR, THAT'S A CHART, IS IT NOT, FROM DR. THUN'S CHAPTER IN THIS MONOGRAPH? IT'S FROM CHAPTER 4, PAGE 317?
A. YES, IT IS.
MS. MASON: ANY OBJECTION TO MY SHOWING THIS AS A DEMONSTRATIVE EXHIBIT?
MR. BROWN: THERE IS NOT.
THE COURT: IF THERE IS NO OBJECTION, YOU MAY SHOW IT.
MS. MASON: Q. IT TAKES A MINUTE TO WARM UP (REFERRING TO ELECTRONIC EQUIPMENT).
DOCTOR, THIS CHART LOOKS AT AGE SPECIFIC DEATH RATES FOR LUNG CANCER, DOES IT NOT?
A. YES, IT DOES.
Q. AND IT LOOKS AT BOTH CPS-I AND CPS-II; IS THAT RIGHT?
A. YES.

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Q. AND IT ACTUALLY COMPARES -- LET'S SEE IF I CAN SEE THE TITLE IN HERE.

(ATTORNEYS CONFER)

MS. MASON: Q. DOCTOR, THIS GRAPH IS COMPARING LIFELONG NONSMOKERS TO CURRENT CIGARETTE SMOKERS; ISN'T THAT

1938

TRUE?

A. ACTUALLY, UNLESS I READ THROUGH THE TEXT OF THIS SECTION, ALL I -- THE ONLY THING I CAN SAY, IT LOOKS LIKES IT INCLUDES NONSMOKERS, BUT DOESN'T SPECIFY WHETHER THEY ARE EX-SMOKERS OR LIFELONG NONSMOKERS.

Q. DOESN'T IT SAY, DOCTOR, THAT IT'S COMPARING LUNG CANCER RATES AMONG CURRENT CIGARETTES SMOKERS AND LIFELONG NEVER-SMOKERS? IS THAT WHAT IT SAYS?

A. THAT IS WHAT IT SAYS. YOU ARE CORRECT.

THAT'S WHAT IT SAYS AT THE TOP OF THE PAGE.

Q. IF YOU'LL LOOK WITH ME, DR. FOGEL, FOR THE AGE GROUP 35 TO 39, THERE IS NO INCREASED RISK, IS THERE, DOCTOR, IN THAT AGE GROUP FOR LUNG CANCER DEATHS?

A. THAT APPEARS TO BE AN INCORRECT INTERPRETATION OF THAT SLIDE. THAT SLIDE ACTUALLY SHOWS STATISTICS OVER A VERY LARGE SPAN.

SO CONSEQUENTLY, ONCE YOU GET TO THE BOTTOM OF THE LEFT-SIDED DEATH RATE LABEL, THE POWER OR THE ABILITY FOR YOU TO SAY WHAT THOSE NUMBERS ARE AT THE LOWER END IS -- CANNOT BE TAKEN OFF OF THAT.

ONE WOULD ACTUALLY HAVE TO LOOK AT THE ACTUAL STATISTICS IN THAT AGE RANGE TO SEE WHAT THE REAL NUMBERS ARE.

Q. THIS IS A CHART, IS IT NOT, THAT DR. THUN PUT TOGETHER?

A. I DON'T KNOW WHO PUT THIS TOGETHER. I WOULD ASSUME THAT IT CAME FROM HIS OFFICE, BECAUSE HE'S THE AUTHOR OF THIS CHAPTER.

1939

Q. AND THIS CHART DOES NOT DEMONSTRATE ANY INCREASE IN THE DEATH RATES IN THE AGE GROUP 35 TO 39, DOES IT, DOCTOR?

A. AGAIN, THAT'S NOT WHAT THIS CHART SHOWS YOU.

THIS CHART SHOWS YOU THAT, AT THESE AGE RANGES, THE ABILITY TO STATE AN ABSOLUTE NUMBER IS BEYOND THE RANGE THAT CAN BE SHOWN ON THAT CHART.

IN OTHER WORDS, IF ONE WERE TO BLOW UP THE INTERVAL BETWEEN ZERO AND 100, THE POINT WHERE YOU COULD DISCERN WHAT THE REAL NUMBER IS THERE, YOU WOULD THEN BE ABLE TO SAY WITH SOME CLARITY WHAT YOU'RE LOOKING AT.

BUT ON THIS CHART, YOU CAN'T INTERPRET ANYTHING ONCE IT APPROACHES ZERO.

Q. RIGHT. THE NUMBERS ARE TOO SMALL, AREN'T THEY, DOCTOR?

A. NO, THE CHART IS TOO SMALL.

I DON'T KNOW WHAT THE NUMBERS ARE. THE NUMBERS THAT WE HAVE FROM THE SEER DATA WOULD SHOW THAT THERE IS AN INCIDENCE.

Q. THIS IS NOT BASED ON SEER DATA, IS IT, DOCTOR?

A. NO, IT ISN'T.

Q. IT'S BASED ON CPS-I AND CPS-II DATA?

MR. BROWN: I'M GOING TO OBJECT TO LACK OF FOUNDATION.

HE HASN'T READ THE CHAPTER, HASN'T SEEN THE CHART.

THE COURT: I DON'T NEED ARGUMENT. ALL I NEED IS THE LEGAL GROUNDS.

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1940
MR. BROWN: FOUNDATION.
THE COURT: DO YOU KNOW THE ANSWER TO THIS QUESTION?
THE WITNESS: NOT BEYOND THE RESPONSE OF WHAT I'VE ALREADY GIVEN.
THE COURT: OKAY.
MS. MASON: Q. DOCTOR, THE TOP OF THIS CHART STATES THAT IT'S "BASED ON SMOKING STATUS AT ENROLLMENT IN CPS-I OR CPS-II," DOES IT NOT?
A. YES, IT DOES.
Q. AND WE HAVE ALREADY DISCUSSED THIS, THE CPS-I AND CPS-II STUDIES.
THOSE ARE STUDIES THAT EACH INVOLVED AT LEAST A MILLION PEOPLE; ISN'T THAT RIGHT?
A. YES, THEY DID.
Q. DR. FOGEL, I WANT TO TALK FOR YOU FOR A MINUTE ABOUT MRS. WHITELEY.
THE COURT: IF YOU'RE DONE WITH THAT MACHINE, YOU MAY WANT TO TURN IT OFF.
MS. MASON: SURE. THANK YOU, YOUR HONOR. THANK YOU.
Q. DR. FOGEL, AM I RIGHT THAT YOU MET MRS. WHITELEY FOR THE FIRST TIME ON JUNE 24TH OF 1998, WHEN SHE WAS IN THE HOSPITAL?
A. YES, THAT'S CORRECT.
Q. AND SHE HAD ALREADY BEEN DIAGNOSED WITH LUNG CANCER AT THAT POINT; IS THAT ALSO RIGHT?
A. YES.
1941
Q. AND YOU WERE CALLED UPON TO TREAT HER WITH RADIATION; IS THAT RIGHT?
A. TO PARTICIPATE IN HER EVALUATION AND COME UP WITH THE PLAN FOR HER TREATMENT, AND THEN TO TREAT HER.
Q. AND WHEN YOU MET MRS. WHITELEY, YOU TOOK A HISTORY FROM HER; ISN'T THAT RIGHT?
A. YES, I DID.
Q. AND AT THAT TIME, DR. FOGEL, SHE TOLD YOU THAT SHE HAD SMOKED ONE PACK OF CIGARETTES A DAY, ISN'T THAT RIGHT, FOR 25 YEARS?
A. I HAVE DOWN IN MY CHART THAT SHE HAD SMOKED ONE PACK PER DAY FOR APPROXIMATELY 25 YEARS.
Q. ALL RIGHT, DR. FOGEL.
YOU WERE ASKED EARLIER SOME QUESTIONS ABOUT YOUR MEDICAL RECORDS THAT HAVE NOTATIONS AS TO MRS. WHITELEY'S USE OF MARIJUANA.
DO YOU REMEMBER THAT?
A. BEING ASKED?
Q. YES.
A. YES.
Q. AND ONE OF THEM IS A DICTATED, TYPED CONSULT; IS THAT CORRECT?
A. YES.
Q. IN FACT, IT'S BEEN PREVIOUSLY MARKED.
DOCTOR, THAT'S BEEN PREVIOUSLY MARKED AS DEFENSE EXHIBIT 5922.02A.
I KNOW YOU HAVE YOUR OWN CHART WITH YOU, BUT I'M GOING TO HAND YOU THIS EXHIBIT, SO WE ARE ALL WORKING OFF
1942
THE SAME COPY.
MS. MASON: YOUR HONOR, I THINK YOU HAVE A COPY, BUT I'M GOING TO HAND ONE TO TATSUO, JUST IN CASE.
THE COURT: THANK YOU.

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MS. MASON: Q. AND THIS, DOCTOR, IS A REPORT YOU PREPARED; IS THAT RIGHT?
A. THIS WAS A REPORT THAT I DICTATED AND THEN WAS PREPARED AT THE HOSPITAL.
MR. BROWN: YOUR HONOR, MAY WE HAVE A SIDEBAR FOR A SECOND?
THE COURT: YES.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: AFTER THAT SIDEBAR, LET'S GO FIVE OR 10 MORE MINUTES. AND THEN WE'LL TAKE OUR MIDAFTERNOON RECESS.
MS. MASON: Q. DOCTOR, I THINK I ASKED YOU THIS QUESTION BEFORE WE STEPPED OUT, BUT JUST TO BE SURE: THIS DEFENSE EXHIBIT 5922.02A, THIS IS A REFERENCE, SIR, THAT YOU CREATED; IS THAT CORRECT?
A. WHAT WAS THE POINT? 02A?
THE COURT: THE DOCUMENT YOU HAVE IN FRONT OF YOU.
MS. MASON: THANK YOU.
THE WITNESS: I WANT TO MAKE SURE WE ARE TALKING ABOUT THE SAME DOCUMENT.
THE COURT: FOR THE RECORD, DOCTOR, THAT'S 5922.02A.

1943

THE WITNESS: YES. THIS IS MY DICTATION.
MS. MASON: ANY OBJECTION TO MY SHOWING IT, THE PARAGRAPH WE DISCUSSED, TO THE JURY?
THE COURT: EXCUSE ME?
MS. MASON: I SAID, ANY OBJECTION TO MY SHOWING IT, THE PARAGRAPH WE DISCUSSED, TO THE JURY?
MR. BROWN: NO.
THE COURT: OKAY.
THE WITNESS: I'M NOT ABLE TO SEE THE SCREEN FROM HERE.
MR. BROWN: IT DOESN'T MATTER.
THE COURT: DO YOU HAVE THE DOCUMENT IN FRONT OF YOU?
THE WITNESS: YES, I DO.
THE COURT: YOU CAN READ ALONG THAT WAY.
MS. MASON: Q. AND, DOCTOR, THAT PARAGRAPH, IN THE MIDDLE PARAGRAPH IS ENTITLED, "PAST MEDICAL HISTORY." DID I READ THAT CORRECTLY?
A. YES.
Q. YOU NOTED IN THAT: "SHE ALSO ADMITS TO EXTENSIVE USE OF MARIJUANA FOR AT LEAST 10 YEARS. SHE STOPPED THIS MANY YEARS AGO."
IS THAT WHAT YOU WROTE IN THIS RECORD, SIR?
A. THAT'S WHAT IT SAYS.
MS. MASON: YOUR HONOR, AT THIS TIME, I'D OFFER DEFENSE EXHIBIT 5922.02A IN EVIDENCE.
MR. BROWN: I'M NOT GOING TO OBJECT TO IT, YOUR HONOR.

1944

THE COURT: EXCUSE ME?
MR. BROWN: I'M NOT OBJECTING TO IT.
THE COURT: OKAY. IT'S RECEIVED.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX RECEIVED
IN EVIDENCE AS DEFENDANTS'
EXHIBIT # 5922.02A)
MR. BROWN: I DO HAVE A QUESTION ABOUT WHETHER WE ARE ENTITLED TO HIGHLIGHT WHEN IT'S UP ON THE SCREEN.

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IT'S PERFECTLY ALL RIGHT WITH ME, COUNSEL. I'M HAPPY WITH IT.

THE COURT: ACTUALLY, I DON'T THINK IT'S A GOOD IDEA.

I COULDN'T SEE FROM WHERE I WAS SITTING WHETHER IT WAS HIGHLIGHTED, BUT I THOUGHT IT MIGHT BE, AND I ALMOST SAID SOMETHING TO YOU.

LET ME JUST SAY: WE NEED TO TELL THE JURY, IF INFORMATION IS HIGHLIGHTED, THAT THAT WAS ADDED BY COUNSEL AND THAT THAT WASN'T PART OF THE DOCUMENT ITSELF.

THAT'S THE CASE AS TO WHAT YOU JUST SHOWED?

MS. MASON: YES. I APOLOGIZE, YOUR HONOR. I DID NOT INTEND TO USE THAT COPY.

THE COURT: FRANKLY, IT DOESN'T MATTER TO ME TOO MUCH WHETHER YOU HIGHLIGHT IT OR NOT. THEORETICALLY, YOU OUGHT TO JUST SHOW THE COPY THAT'S IN EVIDENCE WITHOUT HIGHLIGHTING.

BUT IF YOU WANT TO MAKE THE AGREEMENT BETWEEN YOU THAT YOU CAN SHOW HIGHLIGHTED COPIES, THAT'S OKAY WITH ME.

1945

BUT WHAT IS IMPORTANT IS THAT, IF YOU TO DO THAT, THAT YOU TELL THE JURY THAT COUNSEL HAVE ADDED THE HIGHLIGHTING, SO THE JURY UNDERSTANDS WHAT'S IN THE ORIGINAL DOCUMENT AND WHAT COUNSEL HAVE ADDED.

MR. BROWN: PLAINTIFFS WOULD BE HAPPY TO AGREE TO DO THAT, YOUR HONOR.

THE COURT: IT'S UP TO YOU.

MR. BROWN: IS THAT AGREEABLE?

THE COURT: WHY DON'T YOU -- RATHER MAKE A DEAL HERE, WHY DON'T YOU TALK TO EACH OTHER OUT OF THE JURY'S PRESENCE.

MS. MASON: FOR NOW, I WON'T USE THE HIGHLIGHTED COPY, YOUR HONOR.

Q. AND, DOCTOR, "EXTENSIVE" IS NOT MEANT TO IMPLY OCCASIONAL USE, IS IT?

A. MY COMMON UNDERSTANDING OF THE TERM IS THAT IT COULD BE MORE THAN OCCASIONAL USE.

Q. IN FACT, DOCTOR, YOU WOULD NOT HAVE WRITTEN "EXTENSIVE" IF MRS. WHITELEY HAD TOLD YOU THAT SHE SMOKED A FEW JOINTS WHEN SHE WAS IN HIGH SCHOOL AND USED A LITTLE BIT SOCIALLY; ISN'T THAT RIGHT?

A. UNFORTUNATELY, I CANNOT RECALL THE DETAILS OF THAT CONVERSATION. SO I CAN'T TELL YOU WHY I WROTE WHAT I WROTE HERE WITH RESPECT TO WHAT SHE COMMUNICATED TO ME.

THE COURT: I DON'T MEAN TO INTERRUPT, BUT I HAVE TO, BECAUSE I'M NOT SURE WHETHER I MISSPOKE.

IS THIS DOCUMENT 5922.02A OR .20A?

MR. BROWN: .20A.

1946

THE COURT: I THINK I MISSPOKE.

WHAT YOU HAVE OFFERED INTO EVIDENCE -- WE NEED TO GET THIS STRAIGHT WITH TATSUO -- IS 5922.20A; RIGHT?

MS. MASON: CORRECT.

THE COURT: AND FOR THE RECORD, THERE WAS NO OBJECTION TO THAT; RIGHT?

MR. BROWN: NO. NO, THERE WASN'T.

THE COURT: SO THAT'S THE DOCUMENT THAT'S RECEIVED. 5922.02A, THAT'S NOT OFFERED AND THAT'S NOT RECEIVED.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS DEFENDANTS' EXHIBIT # 5922.20A)

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MS. MASON: Q. DOCTOR, THE SECOND OF YOUR MEDICAL RECORDS THAT DISCUSSES MRS. WHITELEY'S MARIJUANA USE IS YOUR HANDWRITTEN CONSULT; IS THAT RIGHT?

A. YES.

Q. ALL RIGHT, DOCTOR. THIS HAS BEEN PREMARKED AS DEFENSE EXHIBIT 5922.02E.

I'M GOING TO HAND YOU A COPY OF THAT AGAIN, JUST SO WE ARE ALL WORKING OFF THE SAME DOCUMENT.

DOCTOR, DO YOU HAVE THAT IN FRONT OF YOU?

A. YES.

Q. THIS IS ACTUALLY A HOSPITAL RECORD; ISN'T THAT RIGHT?

A. YES, IT IS. IT'S THE HANDWRITTEN NOTE THAT PRECEDED THE FORMAL DICTATION.

1947

Q. AND THIS IS YOUR HANDWRITING, IS IT NOT, DOCTOR?

A. YES, IT IS.

Q. AND IT'S YOUR SIGNATURE AT THE BOTTOM OF THE PAGE?

A. YES.

MS. MASON: AT THIS TIME, YOUR HONOR, I'D OFFER DEFENSE EXHIBIT 5922.02E INTO EVIDENCE.

MR. BROWN: NO OBJECTION.

THE COURT: IT IS RECEIVED.

(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS DEFENDANTS' EXHIBIT # 5922.02E)

MS. MASON: Q. DR. FOGEL, IN THIS RECORD, WE'RE -- YOU ARE GOING TO HAVE TO READ IT FOR US. IT'S HARD TO SEE. YOU READ IT ON DIRECT.

YOU NOTE HERE THAT SHE HAS 10 -- THAT MRS. WHITELEY HAS "10-PLUS YEARS OF HEAVY MARIJUANA USE IN THE PAST"; IS THAT RIGHT, DOCTOR?

A. THAT'S WHAT IT SAYS.

Q. CAN WE HAVE THE LIGHTS, PLEASE.

AND DOCTOR, AS I UNDERSTAND IT, IT'S YOUR TESTIMONY THAT YOU JUST YOU HAVE NO MEMORY OF THIS INTERACTION; IS THAT RIGHT?

A. I HAVE A VERY VAGUE RECOLLECTION OF WHEN WE MET IN THE HOSPITAL, BUT I CAN'T RECALL ANY OF THE DETAIL OF THE CONVERSATION OR THE DISCUSSION THAT WE HAD THERE.

THAT'S THE REASON FOR THE DICTATION.

1948

Q. THIS HANDWRITTEN NOTE WAS ACTUALLY MADE AT THE TIME YOU WERE TALKING TO MRS. WHITELEY; IS THAT RIGHT?

A. IMMEDIATELY AFTERWARDS.

Q. OKAY. AND YOU DON'T KNOW WHETHER IT WAS HER WORDS OR YOUR SUBJECTIVE CONCLUSION; ISN'T THAT RIGHT?

A. THAT'S CORRECT.

Q. BUT, DOCTOR, YOU DIDN'T CHOOSE TO USE THE WORD "LIGHT" IN THIS DOCUMENT?

A. NO.

Q. AND YOU DIDN'T CHOOSE TO USE TERM "INTERMITTENTLY"?

A. NO.

Q. AND YOU DIDN'T CHOOSE TO USE THE TERM "OCCASIONAL"?

A. NO.

Q. OR "IRREGULAR"?

A. NO.

Q. OR "INFREQUENT," DID YOU?

A. NO.

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Q. "EXTENSIVE" CERTAINLY MEANS A LOT, DOESN'T IT, DOCTOR?
A. "EXTENSIVE" MEANS EXTENSIVE.
I CAN ONLY TELL YOU WHAT'S WRITTEN ON THE PAPER.
Q. DOCTOR, A PATIENT'S HISTORY IS ONE OF THE MOST IMPORTANT PIECES OF INFORMATION YOU OBTAIN IN TREATING AND DIAGNOSING A PATIENT; ISN'T THAT RIGHT?
A. IT'S A VERY IMPORTANT COMPONENT.
Q. AND YOU ASK PATIENTS QUESTIONS THAT YOU THINK ARE

1949

RELEVANT TO THEIR CONDITION; ISN'T THAT ALSO TRUE?
A. YES.
Q. YOU DON'T TAKE A HISTORY OF ILLEGAL DRUG USE IF IT'S NOT RELEVANT TO THE PARTICULAR PATIENT'S CONDITION, DO YOU, DOCTOR?
A. I WILL TAKE A HISTORY OF ILLEGAL DRUG USE IF IT MAY CONTRIBUTE, EVEN THOUGH IT MAY NOT CONTRIBUTE.
Q. IF YOU THINK IT'S RELEVANT IN A GIVEN PATIENT'S CASE, YOU TAKE A HISTORY OF ILLEGAL DRUG USE; ISN'T THAT RIGHT?
A. IF I THINK IT MAY BE RELEVANT, I WILL.
Q. YOU TOOK AN ILLEGAL DRUG HISTORY FROM MRS. WHITELEY, DIDN'T YOU?
A. I RECORDED A HISTORY OF IT, BUT I CAN'T TELL YOU IF THAT CAME FROM A DIRECT QUESTION AND ANSWER WITH HER OR FROM MY INTERPRETATION OF OTHER RECORDS OR CONVERSATIONS.
Q. YOU'RE CAREFUL, DOCTOR, AREN'T YOU, DR. FOGEL?
A. I TRY TO BE.
Q. AND KNOW THAT OTHER MEDICAL PRACTITIONERS ARE GOING TO HAVE TO REFER TO AND RELY ON YOUR MEDICAL RECORDS; ISN'T THAT RIGHT?
A. YES.
Q. AND YOU KNOW THAT AT THE TIME YOU'RE CREATING THESE MEDICAL RECORDS, DON'T YOU, DOCTOR?
A. YES.
Q. THAT'S WHY IT'S IMPORTANT TO GET AN ACCURATE HISTORY FROM YOUR PATIENT; ISN'T THAT RIGHT?
A. YES.

1950

Q. AND IT'S NOT YOUR PRACTICE TO BE CARELESS OR LOOSE WITH LANGUAGE WHEN YOU'RE MAKING ENTRIES INTO YOUR PATIENT'S MEDICAL RECORDS, IS IT, DOCTOR?
A. I TRY NOT TO.
Q. AND JUST SO EVERYONE IS CLEAR, DOCTOR, THESE MEDICAL RECORDS WE JUST DISCUSSED, THEY WERE CREATED BEFORE THIS LAWSUIT WAS FILED; ISN'T THAT TRUE?
A. THAT'S CORRECT.
Q. AND YOU CAME AWAY FROM YOUR CONVERSATION WITH MRS. WHITELEY BELIEVING THAT SHE HAD A HISTORY OF EXTENSIVE AND HEAVY USE OF MARIJUANA; CORRECT?
A. I RECORDED IT AS WRITTEN THERE.
Q. FOR AT LEAST 10 YEARS OR MORE; ISN'T THAT RIGHT?
A. AGAIN, THAT'S THE INFORMATION THAT I RECORDED.
Q. ISN'T IT TRUE, DOCTOR, THAT SMOKING MARIJUANA IS PREVALENT AMONG YOUNG ADULTS WITH RESPIRATORY TRACT CANCER?
A. I DON'T KNOW.
Q. AND IT TRUE, DOCTOR, THERE WAS A STUDY DONE IN TAMPA LOOKING AT OVER 800 PATIENTS WITH RESPIRATORY CANCER. THEY FOUND 10 OF THOSE PATIENTS TO BE UNDER 40, AND SEVEN OF THOSE 10 PATIENTS UNDER 40 WITH RESPIRATORY CANCER WERE MARIJUANA SMOKERS; ISN'T THAT RIGHT?
A. I'M NOT FAMILIAR WITH THAT STUDY.
Q. YOU DON'T KNOW ABOUT THAT STUDY?

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A. NO.
Q. ISN'T IT TRUE, DOCTOR, THERE WAS A STUDY DONE IN MIAMI OF 114 LUNG CANCER PATIENTS WHERE 13 PATIENTS WERE LESS THAN 45, AND ALL 13 WERE MARIJUANA SMOKERS?

1951

A. I DON'T --
MR. BROWN: YOUR HONOR --
THE COURT: JUST A SECOND.
YES.
MR. BROWN: OBJECTION.
THE COURT: WHAT IS THE OBJECTION?
MR. BROWN: THE OBJECTION IS THAT SHE'S NOT PERMITTED TO LAY OUT WHAT'S IN THERE.
THE COURT: SUSTAINED.
MS. MASON: Q. DOCTOR, IT'S YOUR OPINION, ISN'T IT, THAT MRS. WHITELEY'S HISTORY OF HEAVY, EXTENSIVE MARIJUANA USE MAY HAVE CONTRIBUTED TO THE DEVELOPMENT OF HER LUNG CANCER?
A. IT MAY HAVE BEEN A CONTRIBUTING FACTOR. HER USE OF MARIJUANA MAY HAVE BEEN A CONTRIBUTING FACTOR.
Q. DOCTOR, THERE ISN'T ANY TEST OR PROCEDURE YOU CAN PERFORM ON A PIECE OF CANCER TISSUE TO DETERMINE WHAT CAUSED THAT CANCER, IS THERE?
A. NOT THAT I'M AWARE OF.
Q. AND DOCTOR, IN A PATIENT WHO HAS MULTIPLE RISK FACTORS IN THEIR BACKGROUND FOR THE DEVELOPMENT OF LUNG CANCER, THERE'S NO TECHNOLOGY, IS THERE, THAT ALLOWS ONE TO ASSESS THE RELATIVE CONTRIBUTION OF ANY ONE OF THOSE RISK FACTORS AS COMPARED TO ANOTHER?
A. I'M NOT CLEAR ON WHAT YOU ARE ASKING WITH RESPECT TO TECHNOLOGY.
Q. LET ME ASK IT THIS WAY, DOCTOR.
IN A PATIENT WITH MULTIPLE RISK FACTORS FOR THE

1952

DEVELOPMENT OF LUNG CANCER, IT'S NOT POSSIBLE TO DETERMINE WHICH, IF ANY, OF THOSE RISK FACTORS CAUSED THE LUNG CANCER; ISN'T THAT RIGHT?
A. FOR ANY ONE INDIVIDUAL PERSON, THEIR SPECIFIC CANCER, IT WOULD NOT BE POSSIBLE TO SAY WHICH ONE OF THE RISK FACTORS HAD GREATER OR LESSER WEIGHT.
MS. MASON: THANK YOU, DOCTOR.
I HAVE NOTHING ELSE, YOUR HONOR.
THE COURT: OKAY. LET ME JUST ASK: WHO IS LEFT AND HOW LONG DO YOU THINK IT WILL TAKE?
THE QUESTION BEING: CAN WE FINISH WITH THE DOCTOR BEFORE THE AFTERNOON RECESS? ANY OTHER DEFENSE LAWYERS?
MR. FURR: NO QUESTIONS.
THE COURT: HOW LONG WOULD YOU BE, MR. BROWN, ROUGHLY?
MR. BROWN: 15 MINUTES.
THE COURT: ARE THERE ANY JURORS THAT WOULD PREFER TO TAKE THE RECESS NOW RATHER THAN WAIT 15 MINUTES? BECAUSE THAT WOULD BE THE LOGICAL POINT TO BREAK FOR THE AFTERNOON RECESS.
WHY DON'T WE KEEP GOING THEN.

REDIRECT EXAMINATION

BY MR. BROWN: Q. WHETHER YOU TOOK THAT HISTORY OF MARIJUANA USAGE DIRECTLY FROM LESLIE WHITELEY OR ANOTHER DOCTOR TOLD YOU OR YOU SAW IT IN SOME OTHER RECORD, IT WAS IN YOUR RECORDS?

1953

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A. CORRECT.
Q. AND YOU CONCLUDED, WITH THAT IN YOUR RECORDS, THAT THE ONLY RISK FACTOR YOU COULD IDENTIFY AS A CAUSE OF HER LUNG CANCER WAS TOBACCO; IS THAT RIGHT?
A. IT'S THE ONLY KNOWN RISK FACTOR WITH A PROVEN STATISTICAL CORRELATION.
Q. OKAY. AND YOU ARE NOT AWARE OF ANY STUDY THAT DEVELOPS AN ASSOCIATION BETWEEN MARIJUANA AND LUNG CANCER?
A. I DON'T KNOW OF ANY STUDY THAT SHOWS A DIRECT CORRELATION.
Q. OKAY. NOW, YOU WERE ASKED ABOUT -- INCIDENTALLY, YOU WERE ASKED A LOT OF QUESTIONS ABOUT WHETHER YOU WERE A CAREFUL DOCTOR, ETCETERA, ETCETERA.
IF A DOCTOR TELLS YOU WHAT'S IN THIS DOCUMENT 5922.20A, THAT IS, "SHE ALSO ADMITS TO EXTENSIVE USE OF MARIJUANA," THERE'S NOTHING CARELESS ABOUT PUTTING THAT IN THE RECORD, IS THERE?
A. I DON'T BELIEVE THERE IS.
Q. WHAT'S THE IMPORTANCE TO YOU OF THE INFORMATION IN THE FIRST PLACE? DID IT MATTER TO YOU ONE WAY OR THE OTHER WHETHER SHE HAD USED MARIJUANA?
A. THERE ARE SEVERAL REASONS WHY I'D BE INTERESTED.
FIRST OF ALL, SMOKING MARIJUANA CAN IRRITATE THE LUNGS.
SECONDLY, THERE IS SOME SUGGESTION THAT IT MAY BE A CONTRIBUTING FACTOR FOR LUNG CANCER.
THIRDLY, A HISTORY OF DRUG USE CAN BE IMPLICATED IN OTHER DISEASES.

1954

AND SO CONSEQUENTLY, KNOWING THAT INFORMATION WILL LEAD ME TO ASK OTHER QUESTIONS, WHETHER IT'S RELATED TO EXPOSURES OR ILLNESSES OR OTHER DISEASE PROCESSES.
Q. DO YOU KNOW WHETHER WHOEVER TOLD YOU THIS INFORMATION, WHETHER IT WAS LESLIE WHITELEY OR SOME OTHER DOCTOR, OR YOU EXTRACTED FROM SOME OTHER RECORD, DID IT -- DID THE SOURCE OF THE INFORMATION CONTAIN EXPRESS AMOUNTS OF USE OR DID YOU MAKE AN INTERPRETATION OF WHAT YOU WERE TOLD OR WHAT? WHAT DO YOU REMEMBER ON THAT SUBJECT?
MS. MASON: OBJECTION, YOUR HONOR. SPECULATION.
THE COURT: WELL, THE QUESTION IS: WHAT DOES HE REMEMBER? IF HE DOES REMEMBER ANYTHING ELSE, HE CAN TELL US. IF HE DOESN'T REMEMBER, HE CAN TELL US. IT DOESN'T CALL FOR SPECULATION AS PHRASED.
THE QUESTION IS: DO YOU RECALL?
THE WITNESS: I HAVE NO RECOLLECTION OF THE DETAILS OF OBTAINING THAT INFORMATION.
MR. BROWN: OKAY.
Q. NOW, YOU WERE ASKED ABOUT THIS CHART, AND YOU WERE EXPLAINING WHY -- YOU WERE ASKED, I THINK, SOMETHING TO THE EFFECT THAT THIS CHART, 4800 -- I'LL HOLD IT UP AND SHOW YOU WHICH ONE IT IS (INDICATING).
DO YOU HAVE IT UP THERE?
A. YES, I DO.
Q. AND YOU WERE ASKED WHETHER THE CHART SHOWED SOME INCREASED RISK ABOVE THE AGE OF 40.
AND YOU SAID, "NO, IT DIDN'T."
WOULD YOU EXPLAIN WHY YOU SAID THAT?

1955

A. WELL, SPECIFICALLY, WHAT I'M SAYING, YOU CAN'T INTERPRET THE CHART BELOW THE AGE OF 40.
Q. I'M SORRY. BELOW THE AGE OF 40. I MISSPOKE.
A. CAN I DRAW SOMETHING TO DEMONSTRATE IT?
Q. SURE. COME ON DOWN AND DO IT.

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A. (PREPARING DRAWING)
THE CHART ROUGHLY SHOWS AGES 40, 35 OR SOMETHING LIKE THAT. AND THE SCALE IS 100, 200, 300. AND AT THIS POINT, IT'S FLAT (INDICATING).
WELL, WHAT IF THE ACTUAL NUMBERS ARE THAT THERE WERE THREE LUNG CANCERS IN WOMEN AT THE AGE OF 35 WHO SMOKED AND NONE IN THE WOMEN UNDER 35 WHO DIDN'T SMOKE?
IT WOULD LOOK JUST LIKE THIS BECAUSE THREE ON THIS SCALE IS RIGHT HERE (INDICATING). AND SO THIS IS UNINTERPRETABLE.
WHAT YOU ACTUALLY WANT ARE THE ABSOLUTE NUMBERS OR A VERSION OF THIS SCALE THAT GOES 10, 20, WHERE IT'S BLOWN UP.
Q. DOCTOR, THIS CHART RELATES TO DEATH RATES AT VARIOUS AGES RATE?
A. DEATH RATES, CORRECT.
Q. LOOK AT AGE 40 ON THIS CHART.
IT'S RIGHT ON THE LINE; CORRECT?
A. YES.
Q. NOW, HOW OLD IS LESLIE WHITELEY?
A. SHE IS 40 NOW.
Q. ALL RIGHT.
AND SHE MIGHT LIVE TO BE 41?

1956

A. YES.
Q. 42?
A. IT'S POSSIBLE.
Q. SHE MIGHT EVEN BE OUT FIVE YEARS, 45?
A. IT'S NOT LIKELY.
Q. SOMEWHERE BETWEEN 40 AND 45, SHE IS GOING TO DIE?
A. MOST LIKELY, SHE WILL.
Q. NOW, IN THE DOCUMENT WHICH YOU DIDN'T SEE --
A. SHOULD I GO SIT BACK DOWN.
Q. ONE OTHER THING, BEFORE I GET INTO THIS THE DOCUMENT.
DRAW THE BELL CURVE YOU REFERRED AS TO WHERE THE AGE OF CANCER DIAGNOSIS IS MOST COMMONLY FOUND.
A. (PREPARING DRAWING) A TRADITIONAL BELL CURVE LOOKS SOMETHING LIKE A BELL, WHERE YOU HAVE THE MAJORITY IN THE MIDDLE AND THEN AS YOU GET TO THE EDGES, IT'S LESS COMMON.
IN THIS CASE, YOU HAVE KIND OF A SKEWED BELL CURVE, WHICH LOOKS PROBABLY SOMETHING LIKE THAT.
Q. ALL RIGHT.
A. THIS REFLECTS THAT YOU HAVE TO ACCUMULATE ENOUGH EXPOSURE BEFORE YOU'RE AFFECTED.
NOW, SOME PEOPLE ACCUMULATE A LOT OF EXPOSURE QUICKLY IF THEY START EARLY AND THEY SMOKE A LOT. OTHERS DON'T START QUITE AS EARLY, MAYBE DON'T SMOKE QUITE AS MUCH OR THE DAMAGE DOESN'T ACCUMULATE QUITE AS RAPIDLY.
SO THE AVERAGE IS GOING TO BE IN THE 60'S. YOU WILL ALSO SEE IT IN THE 70'S.

1957

YOU WON'T SEE AS MUCH IN THE 80'S, BECAUSE PEOPLE ARE DYING OF OTHER THINGS BEFORE THEY MAY GET THE ILLNESS.
Q. AND WHERE DOES LESLIE WHITELEY FALL IN THE BELL CURVE AS FAR AS DIAGNOSIS?
A. SHE IS GOING TO BE DOWN HERE (INDICATING).
Q. SHE IS ON THE LEFT SIDE OF THE BELL CURVE?
A. RIGHT.
NOW, IF I HAD DRAWN THAT BELL CURVE AGAINST A DIFFERENT SCALE, I COULD COMPRESS IT OR EXPAND IT.
IT'S THE SAME CURVE. YOU CAN EXAGGERATE HOW MUCH

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YOU CAN TELL BY CHANGING THE SCALE.

Q. NOW, THIS DOCUMENT ON WHICH THIS CHART IS BASED STUDIED WOMEN AND STOPPED THE STUDY, I BELIEVE, IN 1988.

LET'S SEE IF WE CAN FIND WHERE THAT IS STATED.

IN OTHER WORDS, IT STUDIED -- IT STUDIED WOMEN WHO WERE 35, WHO HAD ACHIEVED THE AGE ON THE CHART BY 1988. I WANT YOU TO ASSUME THAT. OKAY.

IF THAT'S TRUE, LESLIE WHITELEY IS NOT IN THIS GROUP, IS SHE?

A. NO. BUT LESLIE WHITELEY MIGHT NOT BE IN THIS GROUP ANYWAY, BECAUSE IF YOU LOOK AT THE ACTUAL ENROLLMENT, THESE ARE PEOPLE IN A HOUSEHOLD WHERE THERE'S AT LEAST ONE PERSON OVER THE AGE OF 45.

SO IF YOU HAVE A HOUSEHOLD WHERE EVERYBODY IS 35 AND UNDER, THEY'RE NOT IN THE STUDY AT ALL. SO THE NUMBER OF PEOPLE WHO ARE ELIGIBLE TO BE COUNTED IN THIS AGE RANGE BECOMES VERY SMALL.

SO THE RELIABILITY OF THAT INFORMATION AT THE

1958

EXTREME, AT THAT LOW AGE, MAY NOT NECESSARILY BE OF GREAT RELIABILITY.

SO WE'RE LOOKING AT NUMBERS AND INTERPRETING DATA THAT MAY BE MEANINGLESS.

Q. NOW, THE NUMBER OF WOMEN WHO SMOKE HAS BEEN ON THE RISE; IS THAT RIGHT?

A. YES.

Q. NOW, LESLIE WHITELEY'S AGE GROUP, PEOPLE BORN IN AROUND 1959, IS IN THAT RISE IN THE RATE OF WOMEN WHO SMOKE?

A. THAT'S CORRECT.

Q. AND THAT GROUP, BY 1988, DIDN'T MAKE IT TO THE CHART, DID THEY?

A. NO.

Q. AND HERE IS THE 1988 PART. LET'S SEE IF I CAN FIND IT.

WHEN DID CPS-II CONCLUDE THEIR STUDY?

A. I DON'T KNOW. I'D HAVE TO LOOK AT THE DETAILS OF THE STUDY.

Q. I THOUGHT I FOUND IT HERE, BUT I DIDN'T.

A. DO YOU WANT ME TO LOOK?

Q. PERHAPS YOU COULD FIND IT FASTER THAN I CAN. THIS IS THE LAST THING I'M GOING TO ASK YOU ABOUT IN THE INTEREST OF TIME, CPS-II.

INCIDENTALLY, WHILE YOU ARE LOOKING, I WILL ASK YOU TO DO TWO THINGS AT ONCE ON THIS QUESTION OF THE INCIDENCE.

A. ENROLLMENT WAS THROUGH 1988.

Q. SO THIS CHART --

1959

A. AUGUST OF 1988.

Q. THIS CHART IS BASED THEN UPON ENROLLMENT THAT STOPPED IN 1988?

A. YES.

Q. THEY STOPPED STUDYING IN 1988?

A. THEY STOPPED ENROLLING PEOPLE IN 1988.

Q. IN 1988. OKAY.

NOW, YOU WERE ASKED ABOUT COMPARING THE MORTALITY AND THE INCIDENCE OF DEATHS UNDER THE AGE OF 40. YOU SAID THAT THERE ARE OTHER PEOPLE WHO HAVE MORE EXPERTISE ON THAT THAN YOU.

YOU'RE NOT AN EXPERT IN ANALYZING THAT INFORMATION?

A. NO, I'M NOT.

Q. WOULD YOU DEFER TO DR. BURNS?

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A. I WOULD. HE WOULD BE AMONG THOSE PEOPLE WHO I WOULD DEFER TO, YES.
Q. ALL RIGHT. BETWEEN OR IN THE -- AMONG THE CIGARETTE SMOKERS, DID LUNG CANCER DEATH RATES FROM CPS-I TO CPS-II NEARLY DOUBLE IN MEN?
A. AGAIN, I'M GOING TO HAVE TO LOOK THROUGH THIS IN ORDER TO ANSWER THAT QUESTION. THAT'S NOT SOMETHING I KNOW OFF THE TOP OF MY HEAD.
DO YOU WANT ME TO?
Q. LOOK AT PAGE 330.
MS. MASON: YOUR HONOR, I'M GOING TO OBJECT. HEARSAY. HE IS JUST READING FROM THE BOOK.
MR. BROWN: THIS INFORMATION HAS BEEN PUT BEFORE

1960

THE JURY WITH CERTAIN REPRESENTATIONS. I THINK IT NEEDS TO BE CLEARED UP.
MS. MASON: YOUR HONOR, I MOVE TO STRIKE COUNSEL'S COMMENTS.
THE COURT: YES, I AM GOING TO STRIKE THE COMMENTS.
LET ME JUST TELL YOU BOTH, I DON'T WANT ARGUMENT IN FRONT OF THE JURY. I TOLD THE JURY AT THE START OF THE TRIAL THAT I DON'T ALLOW ARGUMENT, SO YOU NEED TO STOP DOING IT. ALL YOU NEED TO DO IS STATE THE LEGAL GROUNDS.
IF YOU THINK THAT I'M MAKING SOME KIND OF BAD MISTAKE, YOU CAN ASK FOR A SIDEBAR AND EXPLAIN TO ME IN THE HALL WHAT YOUR PROBLEM IS.
BUT OTHERWISE, THE CASE GETS EXTENDED IN LENGTH IF I PERMIT ARGUMENT, SO I DON'T DO THAT.
WHAT IS THE DOCUMENT? I WAS FOCUSING ON SOMETHING ELSE. LET ME JUST LOOK AT THE DOCUMENT HERE.
AND WHAT'S THE OBJECTION?
MS. MASON: YOUR HONOR, THE OBJECTION --
THE COURT: THE QUESTION IS YOU WANT HIM TO READ SOME PARAGRAPH?
MS. MASON: CORRECT.
MR. BROWN: I WANT HIM TO CHECK THE INFORMATION IN THE TEXT, WHICH WILL HAVE A BEARING UPON HOW ONE READS THE CHART.
MS. MASON: MY OBJECTION, YOUR HONOR, IS READING FROM THE BOOKLET IS HEARSAY.
MR. BROWN: THE CHART, YOUR HONOR, COMES FROM

1961

THE BOOK, COMES FROM THE TEXT.
THE COURT: YOU SHOWED THE JURY THE CHART.
MS. MASON: I DID.
THE COURT: HE IS SAYING THAT THE CHART IS EXPLAINED BY SOMETHING IN THE BOOK WHICH HE WANTS TO HAVE READ.
THAT'S HIS REPRESENTATION.
MS. MASON: ALL RIGHT, YOUR HONOR. I MISUNDERSTOOD.
I WITHDRAW IT.
THE COURT: OKAY.
IF YOU WANT TO SEE WHAT HE'S HAVING HIM READ BEFORE HE READS IT, YOU CAN DO THAT, AND SATISFY YOURSELF THAT THAT'S WHAT'S HAPPENING HERE.
MS. MASON: WHAT PAGE?
THE COURT: WHY DON'T YOU TELL HIM THE PAGE AND THE PARAGRAPH. WE'LL SEE IF THERE IS AN OBJECTION.
MR. BROWN: Q. PAGE 330. IT'S UNDER "CONCLUSIONS." IT'S THE THIRD PARAGRAPH, DOWN UNDER "CONCLUSIONS."

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IT'S A SMALL PARAGRAPH. LOOKS LIKE JUST TWO SENTENCES.
THE COURT: ANY OBJECTION TO THE WITNESS READING THAT?
MS. MASON: WHICH PARAGRAPH?
MR. HARDY: RIGHT THERE (INDICATING).
MS. MASON: NO, YOUR HONOR.
THE COURT: OKAY. YOU MAY GO AHEAD AND READ

1962

THAT OUT LOUD. THERE'S NO OBJECTION.
MR. BROWN: Q. DOWN WHERE WE ARE, PAGE 330, "CONCLUSIONS," THIRD PARAGRAPH DOWN AMONG --
GO AHEAD. READ.
A. THE CONCLUSION OF THIS PARTICULAR SECTION OF THE REPORT IS THAT BETWEEN THE TIME PERIODS OF CPS-I AND II, THAT THE RATE OF DEATH OF MEN FROM LUNG CANCER HAS GONE UP AND THAT THE RATE OF DEATH FROM WOMEN HAS GONE UP. TWOFOLD IN MEN, SEVENFOLD IN WOMEN.
Q. AND HOW, IN VIEW OF THAT --
A. SIXFOLD IN WOMEN. I'M SORRY.
Q. HOW WOULD THE CHART THEN NEED TO BE INTERPRETED IN VIEW OF THAT?
A. THIS WOULD -- THIS IS -- AN EASIER WAY TO LOOK AT THIS IS TO LOOK AT THE RATE OF SMOKING IN THOSE TIME PERIODS COMPARED TO THE DEATH RATE IN THOSE TIME PERIODS.
WHAT THIS STUDY CONCLUDED WAS THAT, EVEN THOUGH FEWER MEN SMOKED IN THE 1982 STUDY COMPARED TO THE 1959 STUDY, TWICE AS MANY MEN DIED IN THAT TIME PERIOD.
HENCE, THERE'S A REFLECTION OF THE DELAY BETWEEN EXPOSURE AND DEATH. AND THAT EVEN THOUGH MEN HAVE CUT DOWN THEIR SMOKING RATE, THE DEATH RATES HAVE INCREASED.
THE SAME INCREASE IN DEATH RATES IN LUNG CANCER ARE SEEN IN WOMEN, BUT TO A GREATER EXTENT.
THE CPS-I AND II STUDIES, HOWEVER, DID NOT SHOW A DECREASE IN SMOKING RATES IN WOMEN.
Q. WOULD YOU EXPECT TO SEE A GREATER NUMBER OF DEATHS IN WOMEN THAN THIS CHART SHOWS IN WOMEN WHO WERE BORN

1963

IN 1959 OR THEREAFTER WHO BEGAN TO SMOKE?
A. BECAUSE OF THE TRENDS IN SMOKING IN WOMEN, I WOULD EXPECT TO SEE THAT CHART GO UP.
Q. NOW, JUST ONE OTHER THING.
IF YOU GO TO PAGE XV, WHICH IS THE ACKNOWLEDGMENTS, WHICH WAS MENTIONED BY COUNSEL IN YOUR CROSS-EXAMINATION.
DO YOU SEE THAT?
A. YES.
Q. THE FIRST PARAGRAPH, DO YOU SEE WHERE IT SAYS: "THE SCIENTIFIC EDITORS FOR THIS MONOGRAPH WERE DAVID M. BURNS," AND MENTIONS SOME OTHERS? DO YOU SEE THAT?
A. YES, I DO.
Q. AND CHAPTER 1. WHO WROTE CHAPTER -- WHO WAS THE FIRST AUTHOR LISTED IN CHAPTER 1?
A. DR. BURNS.
Q. "INTRODUCTION, SUMMARY, AND CONCLUSIONS," BY BURNS AND TWO OTHERS; CORRECT?
A. YES.
Q. CHAPTER 2, "CIGARETTE SMOKING BEHAVIOR IN THE UNITED STATES," WHO WROTE THAT?
A. DR. BURNS.
Q. ALL RIGHT. CHAPTER 3, THE "AMERICAN CANCER SOCIETY CANCER PREVENTION STUDY I: 12-YEAR FOLLOWUP OF 1 MILLION MEN AND WOMEN," WHO WAS ONE OF AUTHORS OF THAT ONE,

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THE FIRST ONE LISTED?
A. DR. BURNS.
MR. BROWN: I THINK WE RAN OUT OF DR. BURNS'
1964
ACKNOWLEDGMENTS.
THAT'S ALL I HAVE, YOUR HONOR.
THE COURT: ANYTHING FURTHER FOR THE DOCTOR?
MS. MASON: YOUR HONOR, I THINK I JUST HAVE A
COUPLE OF QUESTIONS

RECROSS-EXAMINATION

BY MS. MASON: Q. DR. FOGEL, YOU DON'T SEE
YOURSELF TRULY AS AN EXPERT IN EPIDEMIOLOGY, DO YOU, DOCTOR?
A. I HAVE SOME DEGREE OF KNOWLEDGE AND UNDERSTANDING
THAT'S CERTAINLY ABOVE THAT OF THE AVERAGE LAYPERSON, BUT
I'M NOT A RESEARCHER IN EPIDEMIOLOGY, NO.
Q. YOU DON'T EVEN TRULY CONSIDER YOURSELF AN EXPERT
IN EPIDEMIOLOGY, DO YOU, DOCTOR?
A. I --
MR. BROWN: YOUR HONOR, I'M GOING TO OBJECT.
THIS EXCEEDS THE SCOPE OF REDIRECT. I DIDN'T GET INTO
EPIDEMIOLOGY.
THE COURT: OVERRULED.
MR. BROWN: ALL RIGHT.
THE WITNESS: I WOULD CONTACT PEOPLE WHOM I
CONSIDER TO HAVE GREATER EXPERTISE THAN MYSELF IF I HAD
QUESTIONS THAT I COULDN'T UNDERSTAND OR ANSWER.
MS. MASON: Q. THANK YOU, DOCTOR.
AND THE CONCLUSION THAT YOU READ TO THE JURY FROM
PAGE 330, THAT HAD NOTHING TO DO WITH AGE-SPECIFIC DEATH
RATES, DID IT, DOCTOR?
A. NO, IT DOES NOT.
1965
MS. MASON: THANK YOU.
THE COURT: ANYTHING FURTHER FOR DR. FOGEL BY
ANYBODY?
MR. BROWN: NOTHING FURTHER.
THE COURT: HEARING NOTHING, LET'S LET DR. FOGEL
STEP DOWN.
(WITNESS EXCUSED)
THE COURT: LET'S TAKE OUR AFTERNOON RECESS,
JURORS, FOR 20 MINUTES, PLEASE, TO 10 MINUTES TO 4:00. THEN
I'D LIKE TO GO TO PRETTY CLOSE TO 5:00 O'CLOCK TODAY. SO
PLEASE CONTINUE TO FOLLOW THE ADMONITION.
(RECESS TAKEN FROM 3:30 TO 3:50 P.M.)
THE COURT: WE ARE BACK ON THE RECORD.
WHO IS OUR NEXT WITNESS?
MR. BROWN: YOUR HONOR, OUR NEXT WITNESS IS
MRS. PATSY WHITTEKER, WHO IS THE MOTHER OF LESLIE WHITELEY.
THE CLERK: PLEASE STAND RIGHT HERE AND RAISE
YOUR RIGHT HAND.

TESTIMONY OF
PATSY R. WHITTEKER,

A WITNESS CALLED ON BEHALF OF THE PLAINTIFFS, HAVING BEEN
DULY SWORN, TESTIFIED AS FOLLOWS:
THE CLERK: PLEASE STATE YOUR NAME.
THE WITNESS: MY NAME IS PATSY R. WHITTEKER.
THE CLERK: PLEASE SPELL YOUR NAME.
THE WITNESS: P-A-T-S-Y R. W-H-I-T-T-E-K-E-R.
THE CLERK: THANK YOU. PLEASE TAKE THE STAND.

1966

DIRECT EXAMINATION

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BY MR. BROWN: Q. MRS. WHITELEY, HI.
A. HI.
Q. WE DON'T WANT TO DO ANYTHING HERE THAT IS INCOMPLETE, BUT WE DO WANT TO MOVE RIGHT ALONG, SO LET ME ASK YOU FIRST TO DO THIS.
YOU ARE THE MOTHER OF LESLIE WHITELEY?
A. YES, I AM LESLIE WHITELEY'S MOTHER, AND SHE IS MY YOUNGEST DAUGHTER.
Q. TELL US, BRIEFLY, THE EXTENT OF YOUR FAMILY.
FIRST OF ALL, YOU'RE MARRIED TO TROY WHITELEY?
MS. CHABER: WHITTEKER.
MR. BROWN: Q. OKAY. YOU'RE MARRIED TO TROY WHITTEKER?
A. YES, I AM MARRIED TO TROY WHITTEKER, AND WE HAVE BEEN MARRIED FOR 54 YEARS.
Q. YOU WERE MARRIED IN WHAT YEAR?
A. 1945.
Q. AND HE WAS IN THE NAVY?
A. YES.
Q. HOW MANY CHILDREN DO YOU HAVE?
A. THREE SONS AND THREE DAUGHTERS.
Q. AND WHO ARE THEY, FROM THE OLDEST ON DOWN TO THE YOUNGEST?
A. YES, FROM 1947 TO 1963.
Q. THAT'S WHEN YOUR CHILDREN WERE BORN?
A. YES.
Q. AND THEY ARE MICHAEL?

1967

A. THEY ARE MICHAEL, CHRISTINE.
Q. CHRISTINE.
A. REBECCA, KENNETH.
Q. YOU SAID KENNETH?
A. YES. KENNETH, LESLIE AND DAVID.
IS THAT SIX?
Q. I HOPE. ALL RIGHT.
NOW, TELL THE COURT AND JURY ABOUT YOUR SMOKING HISTORY.
DID YOU SMOKE PRIOR TO 1963?
A. YES, I DID.
Q. WHEN DID YOU FIRST START SMOKING?
A. I SMOKED A FEW CIGARETTES IN 1954, LATE.
Q. OKAY.
A. LATE 1954, AFTER OUR DAUGHTER CHRISTINE WAS BORN.
Q. AND DID THAT CONTINUE AFTER THAT FOR AWHILE?
A. YES, IT DID.
Q. AND HOW MANY CIGARETTES DID YOU SMOKE ON A DAILY BASIS?
A. OH, I THINK I PROBABLY SMOKED TWO OR THREE, AND THEN I PROBABLY SMOKED A HALF A PACK.
Q. SO IT GOT UP TO A HALF A PACK?
A. YES.
Q. AND DID YOU SMOKE RIGHT UP UNTIL 1963?
A. NO. I QUIT SMOKING IN 1962, BEFORE OUR SON KEN -- DAVID WAS BORN.
EXCUSE ME. I HAVE THIS MOTHER PROBLEM.
Q. OKAY. WHY DID YOU STOP?

1968

A. EACH TIME THAT I WAS PREGNANT, THE SMOKE MADE ME NAUSEOUS, AND I DIDN'T SMOKE.
Q. SO YOU WOULD STOP WHILE YOU WERE PREGNANT BECAUSE IT MADE YOU FEEL BAD?
A. YES. EVERY TIME, BECAUSE IT MADE ME NAUSEOUS. AND SO IT LOOKED LIKE THE SMART THING TO DO WOULD BE QUIT.

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Q. AND THEN, AFTER THE PREGNANCY, YOU'D GO BACK AGAIN?
A. YES.
Q. OKAY. NOW, WHEN DID YOU FINALLY QUIT?
A. I FINALLY QUIT BEFORE OUR YOUNGEST SON, DAVID, WAS BORN.
Q. THAT YEAR WAS WHAT?
A. THAT WAS 1962, BECAUSE HE WAS BORN IN MAY, 1963.
Q. AND ON THAT OCCASION, YOU NEVER WENT BACK TO SMOKING?
A. I NEVER SMOKED AGAIN.
Q. NOW, AT THE TIME YOU QUIT, DID YOU KNOW -- DID YOU UNDERSTAND THAT SMOKING CREATED A VERY HIGH RISK OF A FATAL DISEASE?
A. NO.
Q. IF YOU HAD KNOWN THAT, WOULD YOU HAVE COMMUNICATED THAT? WOULD YOU HAVE TOLD YOUR CHILDREN THAT?
A. YES.
Q. DID YOU EVER, WHILE YOUR CHILDREN WERE LIVING AT HOME, COME TO THAT REALIZATION?
A. NO, I DID NOT THINK IT WAS DANGEROUS.
Q. DID YOU KNOW THAT IT MIGHT BE BAD FOR YOU?

1969

A. I THOUGHT IT WAS A BAD HABIT. IT WAS EXPENSIVE, IT MADE YOU STINK, AND IT WAS A TIME-WASTER. AND IT JUST DIDN'T DO YOU ANY GOOD.
Q. OKAY. BUT YOU DID NOT UNDERSTAND THAT IT WAS A HIGH RISK OF A SERIOUS DISEASE?
A. I DIDN'T UNDERSTAND THAT IT WOULD KILL YOU.
Q. IN 1964, DID YOU KNOW WHO OR WHAT THE SURGEON GENERAL WAS?
A. NO.
Q. DID YOU EVER GET AN UNDERSTANDING OF WHO OR WHAT THE SURGEON GENERAL WAS?
A. YES.
Q. ABOUT WHEN?
A. MY FIRST RECOGNITION WAS UNDER RONALD REAGAN, WHEN THE SURGEON GENERAL WAS MR. KOOP.
Q. THAT WAS THE FIRST TIME YOU UNDERSTOOD?
A. THAT WAS MY FIRST TIME I UNDERSTOOD WE HAD A SURGEON GENERAL AND WHAT HE DID.
Q. ALL RIGHT. LET ME DIRECT YOUR ATTENTION BACK TO POST-WORLD WAR II, AND BRING YOU ON UP TO WHEN YOU QUIT SMOKING.
TELL THE COURT AND JURY, WHAT WAS THE ATTITUDE OF YOU AND YOUR FRIENDS ABOUT SMOKING? WHAT DID YOU THINK ABOUT IT?
A. SMOKING WAS GROWN-UP AND GLAMOROUS, AND ALL THE MOVIE STARS SMOKED.
Q. WAS THERE SMOKING IN THE MOVIES, THAT IS, BY THE STARS IN THE FILM ITSELF?

1970

A. YES, THERE WAS. THERE WAS ALSO SMOKING INSIDE THE THEATER.
Q. OKAY. DID YOU SEE ADS IN THAT TIME ERA, IN THE '40S, '50S, PERHAPS EVEN LATER, UP THROUGH AT LEAST UP TO 1968, THAT PROMOTED SMOKING?
A. I PROBABLY DID.
Q. DO YOU REMEMBER LISTENING TO THE LUCKY STRIKE HIT PARADE BACK IN THE '30S?
A. OH, YES.
Q. TELL ME WHAT THAT WAS.
A. WHEN I WAS 15 OR 16, EVERY SATURDAY NIGHT THEY

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HAD THE 10 MOST POPULAR SONGS IN THE COUNTRY, AND THEY WOULD START OUT WITH NO. 10 AND THEN THEY WOULD WORK UP TO NO. 1.
AND IT WAS A VERY POPULAR SHOW, AND NONE OF US EVER MISSED IT. IT WAS ON THE RADIO.
Q. DID YOU COME AWAY FROM THOSE ADS -- OR LISTENING TO THESE RADIO SHOWS WITH ANY IMPRESSION ABOUT WHETHER SMOKING WAS GLAMOROUS OR AN ADULT THING TO DO?
A. I THOUGHT IT WAS PROBABLY AN ADULT THING TO DO BECAUSE THE ADULTS, I SAW ADULTS SMOKE.
Q. DO YOU REMEMBER HEARING ON THE RADIO A JINGLE REGARDING WINSTON CIGARETTES?
A. YES. OH, "WINSTON TASTES GOOD LIKE A CIGARETTE SHOULD."
I WOULD SING IT FOR YOU, BUT I'M NOT A SINGER.
Q. DO YOU RECALL SOMETHING ALONG THE LINES OF "CALL FOR PHILIP MORRIS"?
A. OH, YES. I REMEMBER THAT. THAT WAS EVEN --

1971

Q. GIVE US YOUR BEST IMPRESSION.
A. THAT WAS EVEN ON THE RADIO. BUT WHEN IT FINALLY GOT TO TELEVISION, THERE WAS THIS LITTLE, SHORT GUY, AND HE WOULD SAY, "CALL FOR PHILIP MORRIS," AND THAT WAS THE BEGINNING OF THE PROGRAM.
I HAVE FORGOTTEN WHAT THEY HAD.
MR. BROWN: OKAY. LET ME SHOW YOU WHAT HAS BEEN MARKED AS 1856. THIS IS FOR THE JUDGE.
MS. CHABER: I THINK YOU HAVE THE JUDGE'S COPY. THAT'S THREE-HOLE PUNCHED TOO.
THE COURT: IS THIS ALREADY IN THE BINDER?
MS. CHABER: NO.
THE COURT: NO.
MR. BROWN: NOT IN THE BINDER.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1874)
MS. CHABER: THERE SHOULD BE A TAB, YOUR HONOR.
THE COURT: THIS IS 1856?
MR. BROWN: THAT'S WHAT I SAID YOUR HONOR, BUT I THINK I MISSPOKE.
IT'S 1874. CLOSE ENOUGH FOR GOVERNMENT WORK, I GUESS. HERE WE GO. 1874.
Q. HAVE YOU EVER SEEN -- DID YOU SEE THAT AD AT SOME POINT BACK IN THE '40S, '50S, PERHAPS LATER THAN THAT, BUT AT LEAST PRIOR TO 1968?
A. YES. "MORE DOCTORS SMOKE CAMELS."

1972

Q. AND YOU REMEMBER THAT AD?
A. I REMEMBER THE AD. I DON'T REMEMBER THE DATE OR THE MAGAZINE THAT IT CAME FROM.
Q. AND WHAT DID THAT AD SEND TO YOU BY WAY OF A MESSAGE?
A. WELL, DOCTORS GENERALLY, AT THAT PERIOD OF TIME, WERE THE AUTHORITATIVE PERSONS. IF DOCTORS SAID IT WAS OKAY, IT COULDN'T BE THAT BAD.
MR. BROWN: OKAY. ANY OBJECTION TO MY PUTTING THIS ON THE SCREEN?
MS. MASON: NO OBJECTION.
IF THERE'S NO OBJECTION, I OFFER IT INTO EVIDENCE.
THE COURT: WHAT?
MR. BROWN: I WAS GOING TO OFFER IT IN EVIDENCE.
THE COURT: NO OBJECTION?

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MR. ESCHER: TO OFFERING IT INTO EVIDENCE?
MR. BROWN: YES.
MR. ESCHER: I'M GOING TO OBJECT.
HEARSAY, YOUR HONOR.
MR. BROWN: ALL RIGHT. WE CAN TALK ABOUT THAT LATER. IN ANY CASE --
THE COURT: WAIT JUST A SECOND. WE CAN HANDLE THAT.
MR. BROWN: OKAY.
THE COURT: HOLD ON. IF THE OBJECTION IS HEARSAY, IF THAT'S THE OBJECTION, THE QUESTION IS: ARE YOU OFFERING THIS AS EVIDENCE OF THE TRUTH OF WHAT'S IN THIS

1973

DOCUMENT?
MR. BROWN: NO, OF COURSE NOT.
THE COURT: YOU ARE OFFERING IT AS EVIDENCE OF WHAT?
MR. BROWN: OF WHAT SHE SAYS BY WAY OF ADS THAT EXISTED.
THE COURT: ALL RIGHT.
IS THERE ANY OBJECTION TO 1874 BEING RECEIVED SUBJECT TO THAT LIMITING INSTRUCTION?
MR. ESCHER: THERE'S NO FOUNDATION AS TO TIME ON THIS ONE. THERE'S SUCH A HUGE TIME RANGE ON THIS.
THE COURT: WHY DON'T YOU ASK HER TO GIVE US HER BEST ESTIMATE, OR MAYBE SHE DOESN'T RECALL AS TO WHEN SHE SAW THIS. I DON'T KNOW WHETHER SHE RECALLS OR NOT.
WHY DON'T YOU SEEK TO LAY A FURTHER FOUNDATION ON IT, AND THEN WE'LL DEAL WITH ITS ADMISSIBILITY.
MR. BROWN: ALL RIGHT.
MS. CHABER: WE CAN'T ESTABLISH --
THE COURT: NO, MS. CHABER. HAVE A SEAT, PLEASE. IT'S NOT YOUR WITNESS.
YES, MR. BROWN.
MR. BROWN: Q. DO YOU RECALL SEEING IT PRIOR TO WHEN LESLIE WAS BORN?
A. I COULDN'T SAY WHAT YEAR IT WAS. I JUST RECALL SEEING IT AND READING IT.
Q. ALL RIGHT. DID YOU SEE IT MORE THAN ONCE?
A. I DON'T KNOW.
Q. WHEN YOU WERE SHOWN THIS AD, YOU RECOGNIZED IT

1974

WAS SOMETHING YOU HAD SEEN?
A. YES. YES, I DID.
Q. I THINK YOU SAID YOU SAW IT IN A MAGAZINE?
A. YES. I THINK THAT MUST BE IN A MAGAZINE.
MR. BROWN: YOUR HONOR, I THINK THAT OUGHT TO BE SUFFICIENT.
THE COURT: YOU SAID YOU SAW IT SOMETIME BEFORE 1968; IS THAT YOUR TESTIMONY?
THE WITNESS: I DON'T REALLY -- I CAN'T HONESTLY SAY THE DATE.
MR. BROWN: YOUR HONOR, THE AD WAS NOT RUN EVEN IN THE 60'S.
THE COURT: HOLD ON. DON'T TESTIFY.
MR. BROWN: OKAY.
THE COURT: THE QUESTION IS: DO YOU RECALL WHETHER YOU SAW IT BEFORE OR AFTER 1968, ONE WAY OR THE OTHER? DO YOU RECALL?
THE WITNESS: NO, I DO NOT RECALL.
THE COURT: OKAY. WHERE ARE WE NOW?
WHAT ARE YOU DOING? YOU'RE ASKING TWO THINGS. WHETHER YOU CAN SHOW IT?

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MR. BROWN: THEY'VE ALREADY AGREED TO THAT.
MR. ESCHER: I THINK WE SHOULD OBJECT TO BOTH -- WE ARE OBJECTING TO BOTH, ON THE BASIS OF LACK OF FOUNDATION AS TO THE TIME PERIOD.
THE COURT: SUSTAINED.
MR. BROWN: WE'LL BE ABLE --
THE COURT: HOLD ON. DON'T ARGUE.

1975

MR. BROWN: CAN WE HAVE A MOMENT TO EXPLAIN, YOUR HONOR, WHAT WE CAN DO LATER IN TERMS OF THIS?
THE COURT: YES. WE CAN HAVE A SIDEBAR.
MR. BROWN: OKAY.
(COURT AND COUNSEL CONFER OUTSIDE
THE PRESENCE OF THE JURY)
THE COURT: OKAY. WE ARE BACK ON THE RECORD.
GO AHEAD.
MR. BROWN: YOUR HONOR, SUBJECT TO A MOTION TO STRIKE, I WOULD MOVE THAT THIS BE ADMITTED.
THE COURT: IS THERE ANY OBJECTION TO 1874 BEING ADMITTED SUBJECT TO A MOTION TO STRIKE AT A LATER POINT?
MR. ESCHER: NO, YOUR HONOR.
MS. MASON: NO.
THE COURT: 1874 IS RECEIVED, WITH THE BURDEN BEING ON THE DEFENSE TO MAKE THE MOTION, IF YOU WISH TO.
(DOCUMENT MORE PARTICULARLY
LISTED IN THE INDEX RECEIVED
IN EVIDENCE AS PLAINTIFFS'
EXHIBIT # 1874)
THE COURT: SO I TAKE IT'S THERE IS NO OBJECTION TO IT BEING TO SHOWN TO THE JURY AT THIS TIME, RIGHT?
MR. ESCHER: THAT'S RIGHT, YOUR HONOR.
THE COURT: OKAY.
MR. BROWN: Q. NOW, MRS. WHITTEKER, THE TIME WHEN YOU FIRST SAW THIS AD, IT WAS IN A CURRENT MAGAZINE, SOMETHING THAT HAD COME OUT AT THE TIME YOU SAW IT?
A. YES, I'M SURE IT WAS.

1976

Q. OKAY. AND YOU SEE IT SAYS -- UP THERE AT THE TOP, IT TELLS US THAT "EVERY DOCTOR IN PRIVATE PRACTICE WAS ASKED" -- LET ME SEE IF I CAN MAKE THAT A LITTLE CLEARER.
THE COURT: WAIT A MINUTE. YOU KNOW WHAT? I NEED TO GIVE THE LIMITING INSTRUCTION TO THE JURY ON THIS.
YOU'RE NOT OFFERING THIS AS EVIDENCE OF THE TRUTH OR ACCURACY OF THE INFORMATION CONTAINED IN IT? YOU'RE OFFERING IT AS EVIDENCE OF SOMETHING THAT THIS WITNESS SAW?
MR. BROWN: THAT'S RIGHT.
THE COURT: OKAY.
AND JURORS, LET ME STOP AND PAUSE. I DON'T THINK I HAVE GIVEN YOU A LIMITING INSTRUCTION YET IN THIS CASE.
BUT IN ALMOST EVERY CASE, THIS SITUATION WILL ARISE, PROBABLY ON SEVERAL OCCASIONS, AND IT MAY ARISE IN THIS CASE ON SEVERAL OCCASIONS AS WELL.
SO THOSE OF YOU WHO ARE LOOKING AT IT, WOULD YOU TURN IT OFF THE SCREEN. I WANT TO GIVE THIS LIMITING INSTRUCTION IN A WAY THEY'LL UNDERSTAND IT.
FREQUENTLY, IN THE COURSE OF A LAWSUIT, THERE IS INFORMATION THAT IS OFFERED WHICH A JURY MAY CONSIDER AS EVIDENCE FOR ONE PURPOSE BUT MAY NOT CONSIDER IT AS EVIDENCE FOR ANOTHER PURPOSE. AND WHEN THAT HAPPENS, I WILL GIVE YOU A LIMITING INSTRUCTION.
IN OTHER WORDS, I WILL TELL YOU FOR WHAT PURPOSE YOU MAY CONSIDER THIS DOCUMENT AND FOR WHAT PURPOSE YOU MAY NOT CONSIDER THIS DOCUMENT.

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I DO NOT PLAN TO REPEAT THAT AT THE END OF THE CASE THROUGH ALL THE DOCUMENTS. AS I SAY, IT COMES ABOUT
1977
DURING THE COURSE OF THE CASE. BUT THIS IS ONE SUCH DOCUMENT, AND THIS IS THE FIRST OCCASION WHERE THIS HAS ARISEN, WHICH IS WHY I'M TAKING A LITTLE EXTRA TIME TO EXPLAIN THIS TO YOU, BECAUSE I THINK IT IS LIKELY TO REOCCUR THROUGHOUT THE COURSE OF THIS CASE.
THIS DOCUMENT IS NOT BEING OFFERED BY THE PLAINTIFFS AS EVIDENCE OF THE TRUTH OR THE ACCURACY OF ANY OF THE INFORMATION IN THE AD. IT'S BEING OFFERED ONLY AS EVIDENCE OF AN AD THAT THIS WITNESS SAW.
SO YOU MAY NOT CONSIDER IT AS EVIDENCE OF THE TRUTH OR THE ACCURACY OF ANY STATEMENTS OR REPRESENTATIONS THAT ARE MADE IN THE AD.
YOU MAY CONSIDER IT ONLY AS EVIDENCE OF AN AD THAT THIS WITNESS SAW, TAKEN TOGETHER WITH WHATEVER TESTIMONY SHE MAY GIVE ABOUT THAT DOCUMENT. OKAY.
MR. BROWN: Q. MRS. WHITTEKER, WHEN YOU SAW THIS AD, WHAT MESSAGE DID YOU DRAW FROM THE FACT THAT EVERY DOCTOR IN PRIVATE PRACTICE HAD BEEN ASKED, FAMILY PHYSICIANS, SURGEONS, SPECIALISTS, DOCTORS IN EVERY BRANCH OF MEDICINE, AND THEY'D COME UP AND SAID IN SOME NUMBERS -- LET'S SEE WHAT THEY SAID HERE. AT LEAST THE MAJORITY NAMED CAMEL CIGARETTES.
WHAT DID THAT TELL YOU ABOUT CIGARETTES GENERALLY, CAMEL CIGARETTES SPECIFICALLY?
A. I BELIEVED THAT DOCTORS KNEW WHAT THEY WERE TALKING ABOUT, AND THAT IF THEY SAID THEY WERE NOT DANGEROUS, THAT WAS SO.
MR. BROWN: ALL RIGHT. NOW LET ME SHOW YOU
1978
ANOTHER AD THAT HAS BEEN MARKED. THIS ONE IS 1856.
THE COURT: DID YOU GIVE TATSUO A COPY OF THAT FOR ME?
MR. BROWN: I DID. THAT WAS FOR THE COURT.
DIDN'T I JUST HAND IT TO YOU?
THE CLERK: NO.
MR. BROWN: MAYBE I PUT IT DOWN HERE AND WALKED AWAY.
(DISCUSSION OFF THE RECORD)
MR. BROWN: 1857 IS OPEN?
THE CLERK: YES.
MR. BROWN: ALL RIGHT. LET'S CHANGE IT TO 1857.
THE CLERK: 1857?
MR. BROWN: RIGHT.
Q. MRS. WHITTEKER, DID YOU SEE THIS AD BACK IN THE EARLY '60S OR BEYOND, OR EARLIER THAN THAT?
A. WELL, I COULDN'T SWEAR THAT IT WAS THE EARLY '60S, BUT THIS --
Q. YOU SAY IT WAS NO LATER --
THE COURT: LET ME INTERRUPT. IS THIS THE ORIGINAL OR IS THIS MY COPY?
MR. BROWN: SHE HAS IT.
THE COURT: SHE HAS THE ORIGINAL?
MR. BROWN: THAT'S RIGHT.
THE COURT: THAT HASN'T BEEN MARKED. IT COULDN'T HAVE BEEN, BECAUSE WHEN YOU HANDED IT TO HER, YOU WERE REFERRING TO SOME OTHER NUMBER.
1979
MR. BROWN: IT HAS A TAG ON IT, BUT IT HAS THE WRONG NUMBER ON IT.

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THE COURT: RIGHT. DON'T START GOING DOWN THAT PATH NOW.
MR. BROWN: YOU'RE RIGHT. DISASTER.
MR. BROWN: 1857.
THE CLERK: 1857.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX MARKED FOR IDENTIFICATION PLAINTIFFS' EXHIBIT # 1857)
MR. BROWN: Q. YOU RECALL THAT IT WAS NO LATER THAN SOME TIME IN THE MID-60'S, 1960?
A. YES, I'M SURE IT WAS IN THAT ERA, BECAUSE THIS IS THE MARLBORO MAN LEADING HIS HORSE.
AND HE SAYS "COME TO WHERE THE FLAVOR IS. COME TO MARLBORO COUNTRY." AND THAT WAS A MAN'S MAN.
Q. WAS THERE A MESSAGE HERE FOR YOU IN THAT AD?
A. HE LOOKS PRETTY HEALTHY AND PRETTY ACTIVE TO ME.
MR. BROWN: YOUR HONOR --
THE WITNESS: HE DOESN'T LOOK LIKE HE IS IN A DANGEROUS SITUATION.
MR. BROWN: YOUR HONOR, SUBJECT TO THE SAME IDEA -- I'M SORRY.
THE WITNESS: THAT'S ALL RIGHT.
MR. BROWN: I DIDN'T MEAN TO TAKE IT AWAY.
SUBJECT TO A MOTION TO STRIKE, I WILL OFFER THIS.
THE COURT: ANY OBJECTION TO 1857, SUBJECT TO A

1980

MOTION TO STRIKE?
MS. MASON: NOT AS LONG AS THE SAME LIMITING INSTRUCTION IS GIVEN, YOUR HONOR.
THE COURT: OKAY. ALL RIGHT.
HOLD ON BEFORE YOU SHOW IT.
MR. BROWN: SORRY.
THE COURT: I HAVEN'T RECEIVED IT YET.
WHAT MS. MASON SAID IS SUBJECT TO THE SAME LIMITING INSTRUCTION. DO YOU OBJECT TO THAT?
MR. BROWN: NO, YOUR HONOR.
THE COURT: THEN I'M GOING TO RECEIVE 1857, JURORS, AGAIN SUBJECT TO THAT SAME LIMITING INSTRUCTION. THAT IS, YOU MAY NOT CONSIDER THIS AS EVIDENCE OF THE TRUTH OR ACCURACY OF ANY STATEMENTS MADE IN THE AD.
YOU MAY CONSIDER IT AS EVIDENCE OF AN AD THAT THIS WITNESS SAW, TAKEN TOGETHER WITH HER OTHER TESTIMONY ABOUT IT.
(DOCUMENT MORE PARTICULARLY LISTED IN THE INDEX RECEIVED IN EVIDENCE AS PLAINTIFFS' EXHIBIT # 1857)
MR. BROWN: Q. AT ABOUT THE SAME TIME OR EARLIER, DID YOU SEE OTHER ADS THAT WERE SIMILAR TO THIS, WHICH INCLUDED THE MARLBORO MAN?
A. YES, I DID, BUT I COULDN'T POINT EXACTLY TO ONE.
Q. BUT AT THE SAME TIME OR EARLIER?
A. YES. AT LEAST THE SAME TIME.
Q. DURING THIS PERIOD OF TIME, POST WORLD WAR II,

1981

1950S AND THE 60'S, FROM YOUR OBSERVATION, DID IT SEEM TO YOU THAT -- LET ME PUT IT THIS WAY: HOW MANY PEOPLE DID IT APPEAR TO YOU WERE SMOKING DURING THIS PERIOD OF TIME?
MR. ESCHER: OBJECTION.
MR. BROWN: Q. NOT NUMBERS. JUST AN IMPRESSION FROM WHAT YOU -- AS YOU --
THE COURT: HOLD ON. WHEN THERE'S AN OBJECTION,

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YOU NEED TO PAUSE SO I CAN RULE.
MR. ESCHER: OBJECTION. IT'S VAGUE, YOUR HONOR.
THE COURT: IT IS VAGUE. SUSTAINED.
MR. BROWN: Q. FROM YOUR DAY-TO-DAY OBSERVATION OF PEOPLE IN VENTURA, WHAT PERCENTAGE OF THOSE PEOPLE APPEARED TO BE SMOKERS?
MR. ESCHER: SAME OBJECTION.
THE COURT: HOLD ON.
MR. ESCHER: VAGUE.
THE COURT: IT IS VAGUE.
I MEAN, WHAT PERCENTAGE OF PEOPLE IN VENTURA WHO WERE SMOKERS?
MR. BROWN: THAT SHE OBSERVED ON A DAY-TO-DAY BASIS.
LET ME ASK A COUPLE MORE QUESTIONS.
THE COURT: YES. WHY DON'T YOU SEE IF YOU CAN LAY A FOUNDATION.
MR. BROWN: Q. I ASSUME THAT YOU WERE OUT AND ABOUT IN VENTURA DURING THE '40S AND '50S?
A. YES.
Q. OKAY. AND YOU WOULD GO DOWNTOWN?

1982

A. YES.
Q. GO INTO RESTAURANTS?
A. YES.
Q. INTO MOVIES?
A. YES.
Q. GO TO RECREATIONAL PLACES?
A. YES.
Q. HOW ABOUT THE BEACH? WOULD YOU GO TO THE BEACH?
A. I TRIED NOT TO GO THERE TOO OFTEN.
Q. OKAY. NOW, IN ALL THESE PLACES THAT YOU WENT TO AND OTHERS IN THAT VENTURA ENVIRONMENT, FROM YOUR OBSERVATION, DID IT SEEM LIKE A LARGE PERCENTAGE OF PEOPLE SMOKED OR A MUCH LESSER PERCENTAGE, WHEN COMPARED TO TODAY?
A. COMPARED TO TODAY, IT MIGHT BE A SLIGHT EXAGGERATION, BUT IN SOME WAY, EVERYONE SMOKED. PEOPLE WHO DIDN'T SMOKE WERE IN THE MINORITY.
Q. NOW, AT ANY TIME WHILE YOU WERE RAISING YOUR SIX CHILDREN, INCLUDING LESLIE, AND YOU AND THEY WERE LIVING AT HOME, DID YOU PROVIDE ANY WARNING TO THEM THAT SMOKING WOULD CREATE A HIGH RISK OF A FATAL DISEASE?
A. NO. I DIDN'T KNOW THAT IT WAS DANGEROUS. I DIDN'T KNOW THAT IT WOULD KILL YOU.
Q. ALL RIGHT. DID YOUR MOTHER LIVE NEARBY YOU?
A. NOT TOO FAR AWAY FROM ME.
Q. DID SHE SMOKE?
A. YES, SHE DID.
Q. AND AT LEAST UNTIL 1962, YOU AND YOUR HUSBAND SMOKED?

1983

A. YES.
Q. OKAY. LET ME ASK YOU SOME QUESTIONS ABOUT IN THE '70S OR '80S.
IN THOSE TWO DECADES, DID YOU FORM AN UNDERSTANDING -- AND I ASK THAT -- USE "UNDERSTANDING" DIFFERENTLY FROM PERHAPS HEARING SOMETHING. BUT DID YOU FORM AN UNDERSTANDING FROM ANYTHING YOU READ OR HEARD OR CAME TO YOUR ATTENTION, THE SAME QUESTION, THAT THERE WAS A HIGH LEVEL OF RISK TO A FATAL DISEASE FROM PEOPLE WHO SMOKED?
A. NO. AS I SAID BEFORE, I KNEW IT WASN'T GOOD FOR YOU, BUT I DIDN'T KNOW THAT IT WOULD KILL YOU. THE SAME

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STATEMENT.
Q. DID YOUR MOTHER HAVE A COUGH?
A. MY MOTHER WAS 89 WHEN SHE DIED, BUT SHE DID HAVE A COUGH.
Q. DID YOU ATTRIBUTE THAT TO SMOKING?
A. PROBABLY, BUT SHE WAS 89.
Q. IF SMOKING WASN'T GOOD FOR YOU, WHAT DID YOU THINK IT WOULD DO?
A. WELL, I THOUGHT THAT IF YOU WERE A SWIMMER OR A RUNNER, THAT IT WOULD CUT YOUR WIND. AND IF YOU WERE IN AN ACTIVITY THAT REQUIRED, YOU KNOW, RUNNING OR ANYTHING LIKE THAT, THAT IT WOULD -- IT WOULD CUT DOWN ON YOUR WIND.
Q. WHEN YOU QUIT, DID YOU HAVE A DIFFICULT TIME QUITTING IN 1962?
MS. MASON: OBJECTION, YOUR HONOR. RELEVANCE AND 352.

1984

THE COURT: OVERRULED.
MR. BROWN: Q. DID YOU HAVE DIFFICULTY?
A. YES. I HAD DREAMS WITH LIGHTING UP CIGARETTES, AND I WOULD SAY, "NO, DON'T DO THAT" IN MY DREAM.
THE COURT: AND ON 352, I'VE DONE THE WEIGHING.
MR. ESCHER: I'M SORRY. I DIDN'T HEAR YOU, YOUR HONOR.
THE COURT: I SAID, ON 352, I HAVE DONE THE WEIGHING IN RULING ON THE OBJECTION. I OVERRULED. I ALLOWED THE ANSWER SHE HAS GIVEN.
I WAS JUST EXPLAINING MY RULING.
MR. BROWN: OKAY.
THE COURT: THAT WAS JUST FOR THE RECORD.
MR. BROWN: OKAY.
THE COURT: OKAY.
MR. BROWN: Q. LET ME ASK YOU TO EXPLAIN OR DESCRIBE FOR US YOUR DAUGHTER LESLIE'S ENVIRONMENT IN WHICH SHE GREW UP IN.
WHO WERE HER FRIENDS?
A. THE NEIGHBORHOOD KIDS, AND THERE WERE LOTS OF THEM.
Q. AND DID THEY HANG OUT TOGETHER?
A. YES.
Q. DID THEY DO MOST OF WHAT THEY DID TOGETHER?
A. YES, AT OUR HOUSE AND IN SCHOOL AND AT THEIR HOUSE.
Q. AND DID THESE KIDS GET INTO TROUBLE?
A. NO.

1985

Q. DID LESLIE GET INTO TROUBLE?
A. NO.
Q. WAS SHE REBELLIOUS?
A. NO.
Q. DID SHE HAVE -- DID YOU NOTICE A SENSE OF INDEPENDENCE ABOUT HER?
A. YES. I FOSTERED THAT IN ALL OF THEM.
Q. YOU DIDN'T SEE ANYTHING WRONG WITH HER BEING INDEPENDENT?
A. I THOUGHT YOU HAD TO BE INDEPENDENT TO LIVE IN THIS WORLD.
Q. OKAY. WAS THERE ANYTHING ABOUT LESLIE WHITELEY GROWING UP, INTO HER PRETEENS, INTO HER TEENS, 13 ON UP INTO HIGH SCHOOL, THAT SEEMED SIGNIFICANTLY DIFFERENT THAN HER BROTHERS AND SISTERS?
A. NO. I JUST DIDN'T MUCH CARE FOR AGE 13.
Q. OKAY. TELL ME ABOUT THE AGE 13.

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A. NOT HER BEST.
Q. WHY DIDN'T YOU CARE FOR THAT?
A. WELL, THEY'RE BEGINNING TO FEEL LIKE THEY'RE ADULT WHEN THEY ARE STILL CHILDREN, AND YOU CAN'T ORDER THEM.
YOU HAVE TO INFLUENCE THEM. IT'S A LOT MORE TROUBLE.
Q. DID YOU HAVE ANY RULES AROUND THE HOUSE THAT RELATED TO SMOKING?
A. I DON'T THINK WE TALKED ABOUT IT.
Q. OKAY. WERE THERE ANY HOUSE RULES THAT LESLIE OR

1986

ANY OF YOUR CHILDREN WOULD VIOLATE FREQUENTLY?
A. ANY HOUSE RULES?
Q. ANY HOUSE RULE THAT THEY WOULD -- YOU WOULD FIND THEM FREQUENTLY NOT FOLLOWING YOUR RULES?
A. WELL, IF THEY DID, THEY WOULD KEEP IT SECRET, I'M SURE.
Q. NOT TO MOM'S IDEA OF IT HAPPENING?
A. YOU DON'T ANNOUNCE TO YOUR FOLKS --
Q. IF YOU'RE BREAKING THE RULES?
A. YES.
Q. DID YOU COME AT SOME POINT TO KNOW THAT LESLIE'S OLDER SISTER CHRISTINE SMOKED?
A. NO.
Q. HOW ABOUT, WALKING ON DOWN THE LINE FROM THERE, REBECCA OR BECKY?
A. BECKY DIDN'T SMOKE UNTIL LATER. I WOULD SAY SHE WAS PROBABLY 18.
Q. WERE YOU AWARE THAT LESLIE WAS SMOKING WHILE SHE WAS LIVING WITH YOU IN THE HOUSE BEFORE SHE GRADUATED FROM HIGH SCHOOL?
A. I BELIEVE SHE WAS 16 THEN, AND I DID KNOW BY THAT TIME THAT SHE WAS SMOKING.
Q. DID YOU EVER TALK TO HER ABOUT THAT?
A. SHE KNEW I DIDN'T APPROVE.
Q. DID YOU TELL HER WHY?
A. WELL, I HAD TOLD HER EARLIER IN THE GAME THAT -- THEY DO SEEM TO CARE A GREAT DEAL ABOUT HOW THEY LOOK AND SMELL. AND I TOLD THEM THAT IT WOULD MAKE YOUR HAIR STINK

1987

AND THAT IT COSTS MONEY AND THAT IT WAS A DIRTY HABIT AND THAT IT WAS A TIME-WASTER.
Q. DID LESLIE MAKE UP HER MIND TO ACCELERATE HER HIGH SCHOOL AND GRADUATE EARLY?
A. YES, SHE DID.
Q. WHAT KIND OF STUDENT WAS SHE?
A. SHE WAS ON THE HONOR ROLL IN HER FINAL SEMESTER.
Q. DO YOU RECALL AN INCIDENT AT SCHOOL WHERE SHE WAS SUSPENDED FOR SMOKING? DO YOU REMEMBER THAT?
A. NO. I ONLY JUST HEARD ABOUT THAT TODAY.
Q. SO YOU DON'T REMEMBER IT?
A. I DON'T THINK I KNEW.
Q. OH, OKAY.
WAS THERE ANYTHING THAT LESLIE DID, TO YOUR KNOWLEDGE, GROWING UP THAT REALLY SET HER APART FROM THE CHILDREN THAT SHE WAS GROWING UP WITH, HER FRIENDS, HER NEIGHBORS, HER BROTHERS, HER SISTERS? ANYTHING AT ALL THAT MADE HER STAND OUT IN SOME SIGNIFICANT WAY?
MR. ESCHER: OBJECTION, YOUR HONOR. VAGUE.
THE COURT: SUSTAINED.
MR. BROWN: ALL RIGHT.
Q. NOW, AFTER YOU STOPPED SMOKING, THERE IS EVIDENCE

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THAT A COUPLE OF YEARS LATER, AND THEN A FEW YEARS AFTER THAT, AND YEARS AFTER THAT THAT THERE WERE SOME WARNING LABELS ON CIGARETTE PACKAGES.

DID YOU EVER READ THOSE LABELS?

A. NO. I WASN'T SMOKING. SO WHY WOULD I CARE?

Q. OKAY. DURING THE TIME THAT LESLIE LIVED AT HOME

1988

WITH YOU, WERE YOU AWARE THAT SHE WAS, FROM TIME TO TIME, USING MARIJUANA?

A. NO, I WAS NOT.

Q. WERE YOU AROUND YOUR CHILDREN, INCLUDING LESLIE, ON A DAILY BASIS, CLOSE TO HER AT SOME POINT EVERY DAY AND MAYBE MORE THAN ONCE EVERY DAY?

A. YES, I WAS CLOSE TO THEM ALL THE TIME. I WAS A STAY-AT-HOME MOTHER.

Q. DID YOU EVER SMELL MARIJUANA ON HER OR HER CLOTHES?

A. NO. IF I HAD, I WOULD HAVE HAD SOMETHING TO SAY ABOUT IT, YOU COULD BE SURE.

Q. WOULD YOU HAVE TOLD HER --

A. I WOULD HAVE TOLD HER SHE WAS MAKING A BIG MISTAKE AND THAT SHE SHOULDN'T DO THAT.

Q. WHY?

A. WELL, FOR ONE THING, IT WAS AGAINST THE LAW.

Q. OKAY.

A. TO ME, THAT WAS --

Q. ENOUGH?

A. -- ENOUGH.

Q. ALL RIGHT. NOW, IN THE 1960S, STARTING IN 1960, YOUR HUSBAND WORKED AS A BUSINESS AGENT FOR THE UNION THAT HE HAD BEEN A MEMBER OF?

A. YES.

Q. DO YOU REMEMBER THAT?

A. YES.

Q. AND HE WORE A SUIT AND TIE DURING THAT PERIOD OF

1989

TIME?

A. YES.

Q. DO YOU REMEMBER THAT WAS THREE OR FOUR YEARS IN THE EARLY 1960S?

A. YES.

Q. DESCRIBE WHAT WOULD HAPPEN WHEN HE WOULD COME HOME FROM WORK IN HIS UNION CAR AND IN HIS SUIT AND ARRIVE AT THE HOUSE.

WHAT WOULD THE CHILDREN DO?

A. THEY WOULD ALL RACE OUT AND TRY TO GET HIS LUNCH PAIL, AND HOPEFULLY, THE YOUNGEST ONES HAD FIRST CHOICE.

Q. NOW, IN THE FIRST COUPLE OF YEARS OF THAT ERA, LESLIE WAS A BABY?

A. MM-HMM.

Q. FOR A YEAR, SHE COULDN'T EVEN WALK; SHE COULDN'T WALK VERY WELL?

A. SHE OBVIOUSLY DIDN'T GET THE LUNCH PAIL.

Q. SHE WASN'T INVOLVED IN THAT RACE, AT LEAST FOR A FEW YEARS, OUT TO THE CAR?

A. YES.

Q. WHEN YOUR HUSBAND CAME IN THE HOUSE, STILL IN HIS SUIT, WOULD THERE BE -- WOULD HE HAVE CONTACTS WITH LESLIE?

A. YES. HE WOULD USUALLY SIT DOWN. WE'D HAVE COFFEE AND TALK OVER A FEW MINUTES OF WHAT HAD BEEN GOING ON IN THE DAY.

Q. OKAY.

A. SHE WOULD BE ON DADDY.

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Q. WHAT?

A. AND SHE WOULD BE ON DADDY'S LAP.
Q. OKAY. WHEN SHE GOT OLDER, THREE OR FOUR, AND SHE COULD GET HERSELF OUT TO THE CAR, WOULD SHE THEN JOIN THIS MOB SCENE?
A. YES, THE GROUP.
Q. WHAT WOULD THEY DO WHEN THEY GOT OUT THERE?
EXPLAIN IT. DESCRIBE IT.
A. I DON'T KNOW. I WAS GENERALLY NOT OUT AT THE CAR.
Q. WHEN YOU DID SEE IT, WHAT DID YOU SEE?
A. THE YOUNGEST ONES, OF COURSE, HAD PREFERENCE. HE ALWAYS SAVED SOMETHING IN HIS LUNCH PAIL. SO HE MADE HIS OWN TROUBLE.
BUT BEING THE YOUNGER ONE, SHE WOULD GET PREFERENCE.
Q. NOW, IN TERMS OF LAUNDRY, WHICH I WANT TO TALK TO YOU ABOUT.
A. YES.
Q. YOU LIVED IN VENTURA DURING THE 1960S?
A. YES.
Q. WHAT KIND OF A WASHING MACHINE DID YOU HAVE?
A. WELL, I HAD THE OLD-FASHIONED MAYTAG RINGER WASHER.
Q. IS IT TRUE THAT THE MAYTAG MAN NEVER CAME TO YOUR HOUSE?
A. THAT'S TRUE.
Q. IN THOSE YEARS IN WHICH YOUR HUSBAND WAS IN A BUSINESS SUIT, COULD WE ASSUME YOU WEREN'T WASHING HIS

BUSINESS SUIT?
A. NO, I WAS NOT.
Q. OKAY. LET'S MOVE BEYOND THAT.
WHEN HE BEGAN TO COME HOME AFTER BEING AN AGENT, BUSINESS AGENT, AND HE WAS WEARING HIS WORK CLOTHES, GIVE US A DESCRIPTION OF HOW AND WHEN THE LAUNDRY WAS DONE.
A. WELL, WHEN YOU HAVE A RINGER WASHER, THE WHOLE THING IS, YOU DIVIDE THE CLOTHES UP, THE WHITE CLOTHES, THE COLORED CLOTHES, AND THE LAST TO BE WASHED ARE THE WORK CLOTHES.
Q. OKAY.
A. AND THE WASHER WAS IN THE GARAGE, AND THE CLOTHES WOULD BE SORTED ON THE KITCHEN FLOOR, WHICH WAS LINOLEUM, BECAUSE THAT WAS A NICE BIG AREA TO DO IT.
Q. THE WORK CLOTHES WOULD BE IN A SEPARATE FILE?
A. YES.
Q. WHAT WERE THE WORK CLOTHES -- DESCRIBE THE WORK CLOTHES FOR US.
A. THE WORK CLOTHES WERE LEVI'S, AND CHAMBRAY SHIRTS, AND ALL THE CLOTHES THAT HE WORE TO WORK, YOU KNOW, UNDERWEAR AND THE SOCKS AND EVERYTHING THAT HE WORE TO WORK WOULD BE IN THAT PILE.
Q. WOULD YOU DO THAT EVERY DAY; WOULD IT BE LESS THAN THAT?
A. ONCE OR TWICE A WEEK, YOU KNOW. LIKE EIGHT PEOPLE, YOU'RE GOING TO HAVE A LOT OF CLOTHES.
Q. I CAN IMAGINE. ALL RIGHT.
WHEN THE WORK CLOTHES WERE ON THE FLOOR AFTER

BEING SORTED OUT ON THE KITCHEN FLOOR, WHAT, IF ANYTHING, DID THE CHILDREN DO WITH RESPECT TO THAT PILE OF CLOTHES?
A. TRAMPED THROUGH THEM, AND FALL DOWN ON THEM AND

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OTHERWISE SCATTER THINGS AROUND.
Q. WHEN YOUR HUSBAND BEGAN TO WEAR WORK CLOTHES, AGAIN AS OPPOSED TO A SUIT, THAT WAS 1964. HOW OLD WAS LESLIE IN 1964?
A. I THINK SHE WAS ABOUT FOUR.
Q. WAS SHE ALSO ENGAGED IN THIS FALLING DOWN ON AND CRAWLING AROUND ON THE CLOTHES?
A. YES, BECAUSE SHE WAS LEFT AT HOME. THE OLDER ONES WERE IN SCHOOL. SO SHE ENJOYED MY COMPANY.
Q. DID YOU HAVE ANY PROBLEM WITH HER FALLING OR JUMPING ON THESE CLOTHES?
A. NO. THAT ENTERTAINED HER WHILE I WAS IN THE GARAGE DOING THE ACTUAL WASHING.
Q. SO HOW OFTEN WOULD THAT HAPPEN?
A. WELL, ONCE OR TWICE A WEEK, DEPENDING ON HOW MUCH LAUNDRY HAD PILED UP.
Q. OKAY. NOW, AFTER HE WAS NO LONGER WORKING FOR THE UNION, HE DIDN'T HAVE A COMPANY CAR, I GUESS.
WOULD THAT BE RIGHT?
A. OH, AFTER HE WAS BUSINESS AGENT?
Q. AFTER HE WAS, YES.
A. RIGHT, BECAUSE HE WAS STILL A UNION MEMBER.
Q. SO HE WOULD GO TO THE JOB IN HIS FAMILY -- IN THE FAMILY CAR?
A. YES. WE ONLY HAD ONE CAR.

1993

Q. OKAY. NOW, DID HE ALWAYS BRING THE OVERALLS HOME THAT HE WORE OR WOULD THAT BE LESS FREQUENT?
A. LESS FREQUENT.
Q. WHEN WOULD HE BRING THOSE HOME?
A. ONCE OR TWICE A WEEK.
Q. HE WOULD BRING THEM HOME?
A. WHEN THEY'D GET PRETTY DIRTY.
Q. WOULD LESLIE RIDE IN THE FAMILY CAR AT NIGHT OR ON THE WEEKEND, THE SAME CAR THAT HER FATHER WENT TO WORK IN AND CAME HOME FROM WORK IN?
A. YES. WHEN SHE WENT, WE ALL WENT TOGETHER, OR NOBODY WENT ANYWHERE.
Q. LET'S GO TO THE TIME THAT YOU LEARNED THAT SHE WAS DIAGNOSED WITH LUNG CANCER.
WHEN WAS THAT?
A. IT WAS --
Q. ABOUT JUNE 1998?
A. (NO AUDIBLE RESPONSE)
Q. TELL US WHAT HAPPENED THAT DAY.
A. GIVE ME A MINUTE.
I WAS WITH HER ALL DAY, AND SHE COULDN'T -- I DIDN'T KNOW I WAS GOING TO DO THIS. EXCUSE ME.
Q. THAT MICROPHONE IS ON? DO YOU WANT TO TAP IT?
A. I'M SURE IT'S ON. IT'S JUST ME.
ANYWAY, SHE WAS ON THE COUCH. I WAS WITH HER ALL DAY, TAKING CARE OF HER. AND SHE COULDN'T SWALLOW WATER, SHE COULD BARELY MOVE, SHE WAS SPITTING UP BLOOD, AND SHE HAD TERRIBLE PAIN IN HER CHEST.

1994

Q. WAS SHE THERE WHEN HER HUSBAND CAME HOME?
A. YES, SHE WAS.
Q. WHAT HAPPENED AFTER THAT?
A. I TOLD HIM TO CALL DR. LEONARD.
Q. THAT WAS THE NEUROLOGIST THAT SHE WAS SEEING?
A. THAT WAS THE NEUROLOGIST, THE LAST DOCTOR SHE SAW.
Q. AFTER THAT CALL WAS MADE, DID HE ASK HER TO BE

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TAKEN TO A HOSPITAL?
A. HE SAID, "WAIT UNTIL I GO BACK TO THE OFFICE AND LOOK AT THE X-RAY."
THAT WAS THE LAST TEST HE HAD TAKEN.
Q. AND THAT WAS WHAT, A FEW DAYS OR A WEEK BEFORE?
A. A WEEK BEFORE.
Q. ALL RIGHT. AND THEN WHAT HAPPENED AFTER THAT?
A. HE CALLED ON HIS PHONE AND HE SAID SHE HAD A GIANT MASS IN HER LUNGS, AND SHE HAD CANCER.
THAT WAS DELIVERED OVER THE TELEPHONE TO US.
Q. WHO DID HE TELL THAT TO?
A. HE TOLD IT TO LEONARD, AND LEONARD TOLD IT TO LESLIE.
Q. WHAT HAPPENED AFTER THAT?
A. WE CRIED A LOT.
Q. DID YOU TAKE HER SOMEWHERE?
A. YES. SHE WAS TAKEN TO THE HOSPITAL.
Q. WHICH HOSPITAL?
A. VENTURA COMMUNITY HOSPITAL.
Q. AND WHAT HAPPENED THEN? SHE WAS KEPT?

1995

A. YES.
Q. HOW LONG WAS SHE IN THAT HOSPITAL?
A. I'M NOT SURE, BUT I THINK IT WAS ABOUT TWO WEEKS.
Q. DID YOU LEAVE THAT NIGHT AND GO HOME FROM THE HOSPITAL?
A. YES. I CAN'T REMEMBER EXACTLY WHICH TIME I WENT DOWN THERE, BECAUSE I HAD THE FOUR CHILDREN.
Q. YOU BEGAN TAKING CARE OF HER CHILDREN?
A. THEY COULDN'T BE LEFT ALONE.
Q. THESE ARE LESLIE'S CHILDREN?
A. LEONARD AND I THINK HER DAD WENT TO THE HOSPITAL.
Q. ALL RIGHT.
WHEN DID YOU LEARN THAT SHE HAD BEEN DIAGNOSED AS HAVING LUNG CANCER?
A. WHEN IT WAS ANNOUNCED TO US OVER THE TELEPHONE.
Q. WELL, OKAY. AND WAS THAT CONFIRMED THEN BY OTHER DOCTORS?
A. BY DOCTOR -- I THINK HIS NAME WAS BRUGMAN.
Q. ALL RIGHT. WE HAVE HAD DESCRIBED FOR US THE TREATMENT SHE'S GONE THROUGH. IT'S BEEN DESCRIBED THAT SHE HAD CHEMOTHERAPY AND RADIATION.
WAS ALL OF THIS DONE IN THE HOSPITAL OR WAS SHE OUT FOR SOME OF THAT?
A. THEY STARTED IT IN THE HOSPITAL VERY AGGRESSIVELY.
Q. AND THEN, WHILE SHE WAS STILL HAVING IT, SHE CAME HOME?
A. YES.

1996

Q. WERE YOU AROUND HER DURING THAT TIME?
A. YES.
Q. DESCRIBE WHAT IT WAS LIKE FOR -- WHAT YOU OBSERVED, WHAT IT WAS LIKE FOR HER AND WHAT HER REACTION WAS TO IT.
A. SHE WAS TERRIBLY SICK. TERRIBLY SICK.
Q. EXPLAIN, IF YOU CAN, WHY IT WAS TERRIBLE.
WHAT WAS TERRIBLE?
A. WELL, THE CHEMOTHERAPY HAD MADE HER SICK TO HER STOMACH. AND, OF COURSE, SHE HADN'T EATEN OR DRANK MUCH WATER BEFORE THE TWO WEEKS IN THE HOSPITAL.
AND SHE WAS JUST IN DREADFUL SHAPE.
Q. ALL RIGHT.

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A. AND STILL TRYING TO TAKE CARE OF HER CHILDREN.
Q. DURING THAT TIME, DID SHE GO PLACES WITH THE CHILDREN WHERE THEY HAD TO HAVE SOMEBODY WITH THEM?
A. WE TOOK CARE OF THE CHILDREN.
Q. DID SHE GO TO PLACES WITH THEM, LIKE CAMPFIRE GIRLS OR PLACES LIKE THAT?
A. BEFORE SHE WAS DIAGNOSED WITH CANCER, SHE WAS TO THE POINT OF BARELY WALKING. AND SHE NEVER MISSED TAKING THEM TO THEIR BALL GAMES.
Q. DID THERE COME A TIME WHEN SHE RECEIVED BRAIN RADIATION?
A. YES. THAT WAS LATER.
Q. DESCRIBE WHAT SHE WAS LIKE DURING THAT PERIOD.
A. WELL, WE ALL GRADUALLY GOT A LITTLE ABLE TO HANDLE IT, BUT WE WERE VERY DISAPPOINTED WHEN THE CANCER

1997

WAS -- I DON'T KNOW IF I'M USING THE RIGHT WORD -- HEALED IN THE CHEST. BUT THE TUMOR SHRANK AND DISAPPEARED AND LEFT A GREAT DEAL OF SCAR TISSUE.
AND THE DAY THAT SHE WENT TO THE HOSPITAL, ONE LUNG WAS ALREADY COLLAPSED. IT WAS THAT BAD.
Q. SHE HAS FOUR CHILDREN?
A. YES.
Q. AND ONE OF THEM IS QUITE YOUNG.
THAT'S CARL?
A. CARL.
Q. HOW ARE THE THREE OLDER CHILDREN REACTING TO THIS?
A. THEY'RE VERY WORRIED ABOUT THEIR MOTHER ALL THE TIME.
Q. HOW DOES LESLIE SEEM TO BE REACTING TO HER DIAGNOSIS AND WHATEVER IS GOING TO HAPPEN IN THE FUTURE?
A. WELL, SHE WORRIES A GREAT DEAL ABOUT THE CHILDREN.
Q. DOES SHE TALK TO YOU ABOUT THAT?
A. YES.
Q. IS SHE FRIGHTENED?
A. I GUESS ANYBODY IN THEIR RIGHT MIND WOULD BE FRIGHTENED.
Q. GOING BACK BEFORE THIS ALL HAPPENED, JUST GENERALLY AND BRIEFLY, WHAT KINDS OF THINGS DID LESLIE AND LEONARD DO WITH THEIR CHILDREN AND THEMSELVES? WHAT KIND OF RECREATION DID THEY HAVE?
A. WELL, THEY WENT TO ALL THE THINGS THE CHILDREN GO

1998

TO. YOU TAKE YOUR CHILDREN TO CHURCH. YOU TAKE THEM SHOPPING WITH YOU. THEY TAKE THEIR CHILDREN EVERYWHERE.
Q. AND DID YOU AND YOUR HUSBAND SEE THE CHILDREN VERY OFTEN?
A. YES.
Q. DID YOU SEE LEONARD AND LESLIE OFTEN?
A. YES.
Q. AND THAT'S ALSO TRUE OF ALL YOUR OTHER CHILDREN WHO LIVE IN THE VENTURA AREA?
A. YES.
Q. HOW WOULD YOU DESCRIBE YOUR FAMILY IN TERMS OF CLOSENESS?
A. I WOULD SAY WE'RE ALL REALLY CLOSE. WE DON'T ALL AGREE WITH EACH OTHER, BUT THERE'S A LOT OF PEOPLE WHO HAVE A LOT OF OPINIONS.
Q. HOW IS LESLIE COPING WITH THE SITUATION NOW?
A. WELL, WE DON'T TALK ABOUT DYING. WE TALK ABOUT LIVING.

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Q. IS THEIR OPTIMISM? DO YOU HAVE OPTIMISM?
A. YOU HAVE TO HAVE OPTIMISM.
Q. DID THERE COME A TIME AT SOME POINT WHERE YOU REALIZED, YOU UNDERSTOOD THAT CIGARETTES WERE IN FACT A PRODUCT THAT CONTAINED A HIGH RISK OF DYING FROM SOME SMOKERS' DISEASE?
A. YES.
Q. OKAY.
A. WHEN I SAW --
Q. WAIT A MINUTE.

1999

A. EXCUSE ME.
Q. LET ME ASK YOU A LEADING QUESTION WHICH NOBODY WILL OBJECT TO, I ASSUME.
DID THAT OCCUR IN ABOUT THE MID-90'S, '94, '95?
A. YES. THAT'S WHEN I WAS THINKING OF.
Q. YOU SAW SOMETHING ON TV THAT ALERTED YOU TO THAT?
A. IN THE NEWS.
Q. OH, ALL RIGHT.
AND THIS WAS ABOUT FOUR -- THREE, FOUR YEARS BEFORE YOUR DAUGHTER WAS DIAGNOSED WITH LUNG CANCER?
A. YES.
Q. ALL RIGHT. LESLIE AND LEONARD WERE MARRIED AROUND 1985 OR '6, IS THAT ABOUT RIGHT; SOMETHING LIKE THAT?
A. YOU KNOW, I'VE GOT SIX ANNIVERSARIES TO KEEP TRACK OF. AND I'M NOT REALLY SURE.
Q. PROBABLY MORE THAN THAT.
HOW MANY GRANDCHILDREN DO YOU HAVE?
A. I HATE SAYING 16 OR 17, BUT FROM TIME TO TIME, I HAVE TO COUNT THEM TO MAKE SURE.
Q. YOU'VE GOT ALL THOSE ANNIVERSARIES TO THINK ABOUT.
DESCRIBE TO US LEONARD'S MARRIAGE AND LESLIE'S MARRIAGE TO THE OTHER.
WHAT'S IT BEEN LIKE?
A. THEY GET ALONG WELL. THEY HAVE THEIR DIFFERENCES, BUT THEY BOTH, YOU KNOW --
Q. ARE THEY A CLOSE FAMILY?
A. YES.

2000

Q. THE TWO OF THEM, THEIR CHILDREN?
A. THEY ARE DEDICATED TO THEIR FAMILIES. THEY DIDN'T HAVE CHILDREN UNTIL THEY WERE READY.
Q. WHAT ARE THEIR CHILDREN LIKE? ARE THEY GOOD KIDS? HOW WOULD YOU DESCRIBE THEM?
A. THEY'RE TERRIFIC CHILDREN. THEY CRY IF THEY DON'T GET TO GO TO SCHOOL. I LOVE THAT.
Q. HOW DOES LESLIE DEAL WITH -- PHYSICALLY DEAL OR MENTALLY DEAL WITH THE PROBLEM? DOES SHE TALK ABOUT IT? DOES SHE STAY QUIET? HOW WOULD YOU DESCRIBE THAT?
A. WE HAVE FOUND WHAT WORKS IS THAT WE'RE OPTIMISTIC AND WE HAVE OUR OWN BRAND OF KIND OF SICK JOKES, BECAUSE THE ONLY WAY YOU CAN DEAL WITH SOMETHING THAT IS TERRIBLY SERIOUS IS TO LAUGH. YOU'VE GOT TO LAUGH OR YOU'RE DONE FOR.
Q. DOES LESLIE APPEAR TO HAVE A DETERMINATION TO TRY TO GET WELL?
A. YES, SHE DOES.
Q. DOES SHE HAVE A GOOD ATTITUDE?
A. YES.
Q. NOW, ANYWHERE ALONG THE WAY FROM 1959 THROUGH THE 60'S, '70S, 80'S, UP UNTIL WHEN YOU DISCOVERED IT, IF YOU HAD REALIZED WHAT THE SERIOUS RISK OF SMOKING WAS, WHAT

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WOULD YOU HAVE DONE WITH THAT KNOWLEDGE WITH RESPECT TO YOUR CHILDREN?

A. WELL, IT WOULD HAVE BEEN LIKE IF YOU SAW A CAR THAT WAS STARTING TO RUN OVER THEM. YOU WOULD THROW YOURSELF INTO THE PATH TO GET THEM OUT OF THE WAY. THAT IF

2001

YOUR CHILDREN ARE THREATENED BY SOMETHING THAT'S GOING TO KILL THEM, YOU'RE GOING TO REALLY GO FOR IT.

Q. THAT'S WHAT --

A. TRY TO STOP THEM IN ANY WAY YOU CAN.

Q. AND THAT'S WHAT YOU WOULD HAVE DONE AS THEY WERE GROWING UP, AND EVEN AFTER THEY'RE OUT OF THE HOUSE, IF YOU HAD REALIZED THE SERIOUSNESS OF THE RISK?

A. ABSOLUTELY.

MR. BROWN: THAT'S ALL I HAVE.

THE COURT: MS. MASON. LET ME JUST ASK YOU A QUESTION. UNLESS YOU ARE GOING TO FINISH IN THE NEXT 10 MINUTES, I THINK I'M GOING TO TAKE THIS OPPORTUNITY TO RECESS FOR THE DAY.

MS. MASON: YOUR HONOR, I DON'T THINK I WILL FINISH. THANK YOU.

THE COURT: THIS IS A LOGICAL POINT AND WE ARE GOING TO GET TO QUIT FOR THE DAY.

JURORS, OVER THE COURSE OF THE EVENING, PLEASE DO NOT DISCUSS THIS CASE WITH ANYONE. DO NOT LET ANYONE DISCUSS IT WITH YOU. PLEASE DO NOT FORM OR EXPRESS ANY OPINIONS ABOUT THE CASE.

COUNSEL, DO YOU WANT TO TALK TO ME FOR A MINUTE ABOUT WHAT TIME WE SHOULD START WITH THE JURY TOMORROW MORNING?

LET'S JUST TALK VERY BRIEFLY ABOUT THAT. I DO NOT HAVE ANOTHER MATTER. THE QUESTION IS: DO YOU WANT SOME TIME WITH ME OR NOT? I'LL BE RIGHT BACK WITH YOU.

(COURT AND COUNSEL CONFER OUTSIDE

2002

THE PRESENCE OF THE JURY)

THE COURT: JURORS, I HAVE ALREADY TOLD YOU TO CONTINUE TO FOLLOW THE ADMONITION TONIGHT, PLEASE.

AND WE ARE GOING TO START AT 9:30 TOMORROW. HAVE A GOOD EVENING. WE'LL SEE YOU AT 9:30.

(THE PROCEEDINGS ADJOURNED AT 4:55 P.M.)

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